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Madison

**THE
MADISON PAPERS.**

THE
P A P E R S
OF
J A M E S M A D I S O N,

PURCHASED BY ORDER OF CONGRESS;

BEING

HIS CORRESPONDENCE AND REPORTS OF DEBATES DURING
THE CONGRESS OF THE CONFEDERATION

AND

HIS REPORTS OF DEBATES

IN THE

FEDERAL CONVENTION;

NOW PUBLISHED FROM THE ORIGINAL MANUSCRIPTS, DEPOSITED
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Report of the Committee on the *seventh* resolution, providing that at present the whole number of members in the first branch shall be sixty-five and apportioning them in a certain ratio among the States—Agreed to—Motion that a census be taken every — years, and the representation in the first branch be arranged by the Legislature accordingly—Adjourned.

WEDNESDAY, July 11th 1064

Amendment to the *seventh* resolution, requiring the future representation to be arranged by the Legislature according to a periodical census, resumed—Motion to amend it by requiring the Legislature to arrange the representation according to a census of the free inhabitants, taken at least every fifteen years—Agreed to—Motion farther to amend by requiring the census to include three fifths of the negroes—Disagreed to.

THURSDAY, July 12th 1079

Seventh resolution, relative to the proportion of suffrage in the first branch, resumed—Motion to provide that representation and direct taxation shall be in the same proportion—Agreed to—Motion to provide that for the future arrangement of representation, a census shall be taken within six years, and within every ten years afterwards, and that it shall be made according to the whole number of inhabitants, rating the blacks at three fifths of their number—Agreed to.

FRIDAY, July 13th 1087

Seventh resolution, relative to the proportion of suffrage in the first branch, resumed—Motion to provide that until the first census be taken, the proportion of the representatives from the States in the first branch, and the moneys raised from them by direct taxation shall be the same—Agreed to—Motion to strike out the amendment heretofore made for regulating future representation on the principle of wealth—Agreed to.

SATURDAY, July 14th 1094

Seventh resolution, relative to the proportion of suffrage in the first branch, resumed—Motion that the number of representatives in the first branch from new States, shall never exceed those of the present States—Disagreed to.

Eighth resolution, relative to the proportion of suffrage in the second branch, resumed—Motion to provide that the second branch shall consist of thirty-six members, distributed among the States in certain proportions—Disagreed to.

MONDAY, July 16th 1107

Seventh and *eighth* resolutions as amended, and fixing the suffrage in both branches, resumed—Agreed to.

Sixth resolution defining the powers of the Legislature, resumed—Motion to amend by giving a specification of the powers not comprised in general terms—Disagreed to.

TUESDAY, July 17th 1114

Sixth resolution, defining the powers of the Legislature, resumed—Motion to amend, so as to provide that the National Legislature should not interfere with the governments of the States in matters of internal police, in which the general welfare of the United States is not concerned—Disagreed to—Motion to amend so as to extend the power of the Legislature to cases affecting the general interests of the Union—Agreed to—Motion to agree to the power of negating State laws—Disagreed to—Motion to provide that the acts of the Legislature, and treaties made in pursuance of the Constitution, shall bind the several States—Agreed to.

Ninth resolution, relative to National Executive—Motion to amend so as to provide that the Executive be chosen by the people—Disagreed to—That he be chosen by Electors appointed by the State Legislatures—Disagreed to—Motion to amend by striking out the provision that the Executive is to be ineligible a second time—Agreed to—Motion to amend so as to provide that the term of the Executive should be during good behaviour—Disa-

greed to—Motion to amend by striking out seven years as the Executive term—Disagreed to.

WEDNESDAY, July 18th 1130

Tenth resolution, giving the Executive a negative on acts of the Legislature not afterwards passed by two thirds—Agreed to.

Eleventh resolution, relative to the Judiciary—Motion to amend so as to provide that the supreme judges be appointed by the Executive—Disagreed to—That they be nominated and appointed by the Executive, with the consent of two thirds of the second branch—Disagreed to—Motion to amend so as to provide that their compensation shall not be diminished while in office—Agreed to.

Twelfth resolution, relative to the establishment of inferior National tribunals, by the Legislature—Agreed to.

Thirteenth resolution, relative to the powers of the National Judiciary—Motion to amend by striking out their power in regard to impeachment of National officers—Agreed to—Motion to amend so as to provide that their power shall extend to all cases arising under the National laws, or involving the National peace and harmony—Agreed to.

Fourteenth resolution, providing for the admission of new States—Agreed to.

Fifteenth resolution, providing for the continuance of the Congress of the Confederation and the completion of its engagements—Disagreed to.

Sixteenth resolution, guaranteeing a republican government and their existing laws to the States—Motion to amend so as to provide that a republican form of government, and protection against foreign and domestic violence, be guaranteed to each State—Agreed to.

THURSDAY, July 19th 1141

Ninth resolution, relative to the National Executive, resumed—Motion to amend so as to provide that the Executive be chosen by Electors chosen by the State Legislatures—Agreed to—Motion to amend so as to provide that the Executive shall be ineligible a second time—Disagreed to—Motion to amend by making the Executive term six years—Agreed to.

FRIDAY, July 20th 1152

Ninth resolution, relative to the National Executive, resumed—Motion to provide that the number of Electors of the Executive to be chosen by the State Legislatures shall be regulated by their respective numbers of representatives in the first branch, and that

at present it shall be in a prescribed ratio—Agreed to—Motion to amend by striking out the provision for impeaching the Executive—Disagreed to—Motion to provide that the Electors of the Executive shall not be members of the National Legislature, nor National officers, nor eligible to the supreme magistracy—Agreed to.

SATURDAY, July 21st 1161

Ninth resolution, relative to National Executive, resumed—Motion to provide for the payment of the Electors of the Executive out of the National Treasury—Agreed to.

Tenth resolution, relative to the negative of the Executive on the Legislature, resumed—Motion to amend by providing that the Supreme Judiciary be associated in this power—Disagreed to.

Eleventh resolution, relative to Judiciary, resumed—Motion to provide that the Judges be nominated by the Executive, and appointed, unless two thirds of the second branch disagree thereto—Disagreed to.

MONDAY, July 23d 1175

Seventeenth resolution, providing for future amendments—Agreed to.

Eighteenth resolution, requiring the oath of State officers to support the Constitution—Agreed to.

Nineteenth resolution, requiring the ratification of the Constitution by State Conventions—Motion to amend by providing for its reference to the State Legislatures—Disagreed to—Motion to a second Federal Convention—Not seconded.

The *eighth* resolution, relative to the suffrage in the second branch, resumed—Motion to amend so as to provide that the representation consist of two members from each State, who shall vote per capita—Agreed to.

TUESDAY, July 24th 1188

Ninth resolution, relative to the National Executive, resumed—Motion to amend so as to provide that he be appointed by the National Legislature, and not by Electors chosen by the State Legislatures, Agreed to—Motion to amend so as to provide that the Executive be chosen by Electors taken by lot from the National Legislature—Postponed.

The resolutions as amended and adopted, together with the propositions submitted by Mr. Patterson, and the plan proposed by Mr. C. Pinckney, referred to a Committee of Detail, to report a Constitution conformable to the resolutions.

WEDNESDAY, July 25th : 1197

Ninth resolution, relative to the National Executive, resumed—

Motion to appoint the Executive by Electors appointed by State Legislatures, where the actual Executive is re-eligible—Disagreed to—Motion to appoint the Executive by the Governors of States and their Councils—Not passed—Motion that no person be eligible to the Executive for more than six years in twelve—Disagreed to.—Motion to authorize copies to be taken of the resolutions as adopted—Disagreed to.

THURSDAY, July 26th 1207

The *ninth* resolution, relative to the National Executive, resumed—Motion that the Executive be for seven years, and not re-eligible—Agreed to.

The *third* and *fourth* resolutions, relative to the qualifications of the members of the Legislature, resumed—Motion to require property and citizenship—Agreed to—Motion to exclude persons indebted to the United States—Disagreed to.

Statement of the resolutions as amended agreed to, and referred to the Committee of Detail.

Plan of a Federal Constitution, offered by Mr. Charles Pinckney on the 29th May, referred to the Committee of Detail.

Propositions offered by Mr. Patterson on the 15th June, referred to the Committee of Detail.

MONDAY, August 6th 1226

Report of Committee of Detail.

Draught of a Constitution, as reported by the Committee.

DEBATES
IN THE
CONGRESS OF THE CONFEDERATION,
FROM
FEBRUARY 19TH, TILL APRIL 25TH, 1787.

DEBATES

IN THE

CONGRESS OF THE CONFEDERATION,

FROM FEBRUARY 19TH TILL APRIL 26TH, 1787.

IN CONGRESS, MONDAY, FEBRUARY 19, 1787.*

Mr. PINCKNEY, in support of his motion entered on the Journal, for stopping the enlistment of troops, argued that he had reason to suppose the insurrection in Massachusetts, the real, though not ostensible object of this measure, to be already crushed; that the requisition of five hundred thousand dollars for supporting the troops had been complied with by one State only, viz. Virginia, and that but in part; that it would be absurd to proceed in the raising of men who could neither be paid, clothed nor fed, and that such a folly was the more to be shunned, as the consequences could not be foreseen, of embodying and arming men under circumstances which would be more likely to render them the terror than the support of the Government. We had, he observed, been so lucky in one instance—meaning the disbanding of the army on the peace—as to get rid of an armed force without satisfying their just claims; but that it would not be prudent to hazard the repetition of the experiment.

Mr. KING made a moving appeal to the feelings of

* From 1783 till this period Mr. Madison was not a member.

Congress, reminding them that the real object in voting the troops was, to countenance the exertions of the Government of Massachusetts; that the silent co-operation of these military preparations under the orders of Congress had had a great and double effect, in animating the Government and awing the insurgents; that he hoped the late success of the former had given a deadly blow to the disturbances, yet that it would be premature, whilst a doubt could exist as to the critical fact, to withdraw the co-operating influence of the Federal measures. He particularly and pathetically entreated Congress to consider that it was in agitation, and probably would be determined by the Legislature of Massachusetts, not only to bring to due punishment the more active and leading offenders, but to *disarm* and *disfranchize*, for a limited time, the great body of them; that for the policy of this measure he would not undertake to vouch, being sensible that there were great and illustrious examples against it; that his confidence, however, in the prudence of that Government, would not permit him to call their determinations into question; that what the effect of these rigors might be it was impossible to foresee. He dwelt much on the sympathy which they probably would excite in behalf of the stigmatized party; scarce a man was without a father, a brother, a friend, in the mass of the people; adding that, as a precaution against contingencies, it was the purpose of the State to raise and station a small military force in the most suspected districts, and that forty thousand pounds, to be drawn from their impost on trade, had been appropriated accordingly;

that under these circumstances a new crisis more solemn than the late one might be brought on, and therefore to stop the Federal enlistments, and thereby withdraw the aid which had been held out, would give the greatest alarm imaginable to the Government and its friends, as it would look like a disapprobation and desertion of them; and, if viewed in that light by the disaffected, might rekindle the insurrection. He took notice of the possibility, to which every State in the Union was exposed, of being visited with similar calamities; in which event they would all be suing for support in the same strain now used by the Delegates from Massachusetts; that the indulgence now requested in behalf of that State might be granted without the least inconvenience to the United States, as their enlistments, without any countermanding orders, would not go on whilst those of the State were in competition; it being natural for men to prefer the latter service, in which they would stay at home, and be sure of their pay, to the former, in which they might, with little prospect of it, be sent to the Ohio to fight the Indians. He concluded with the most earnest entreaties, and the fullest confidence, that Congress would not, at so critical a moment, and without any necessity whatever, agree to the motion, assuring them that in three or four weeks, possibly in less time, he might himself be a friend to it, and would promote it.

Mr. PINCKNEY, in reply, contended, that if the measures pursuing by Massachusetts were such as had been stated, he did not think the United States bound to give them countenance. He thought them

impolitic, and not to be reconciled with the genius of free governments; and if fresh commotions should spring from them, that the State of Massachusetts alone should be at the charge, and abide by the consequences of their own misconduct.

Mr. MADISON would not examine whether the original views of Congress, in the enlargement of their military force, were proper or not; nor whether it were so, to mask their views with an ostensible preparation against the Indians. He admitted, indeed, that it appeared rather difficult to reconcile an interference of Congress in the internal controversies of a State with the tenor of the Confederation, which does not authorize it expressly, and leaves to the States all powers not expressly delegated;—or with the principles of republican governments, which, as they rest on the sense of the majority, necessarily suppose power and right always to be on the same side. He observed, however, that in one point of our view military precautions on the part of Congress might have a different aspect. Whenever danger was apprehended from any foreign quarter, which, of necessity, extended itself to the Federal concerns, Congress were bound to guard against it, and although there might be no particular evidence in this case of such a meditated interference, yet there was sufficient ground for a general suspicion of readiness in Great Britain to take advantage of events in this country, to warrant precautions against her. But waving the question as to the original propriety of the measure adopted, and attending merely to the question whether at this moment the measure ought, from a change of

circumstances, to be rescinded, he was inclined to think it would be more advisable to suspend than to go instantly into the rescision. The considerations which led to this opinion were—

First. That though it appeared pretty certain that the main body of the insurgents had been dispersed, it was by no means certain that the spirit of insurrection was subdued. The leaders, too, of the insurgents had not been apprehended, and parties of them were still in arms in disaffected places.

Secondly. That great respect is due on such occasions to the wishes and representations of the suffering member of the Federal body, both of which must be judged of by what comes from her representatives on the floor. These tell us that the measures taken by Congress have given great satisfaction and spirits to their constituents, and have co-operated much in baffling the views of their internal enemies; that they are pursuing very critical precautions at this moment for their future safety and tranquillity; and that the construction which will be put on the proposed resolution, if agreed to by Congress, cannot fail to make very unhappy impressions, and may have very serious consequences. The propriety of these precautions depends on so many circumstances better known to the Government of Massachusetts than to Congress, that it would be premature in Congress to be governed by a disapprobation.

Thirdly. That every State ought to bear in mind the consequences of popular commotions, if not thoroughly subdued, on the tranquillity of the Union, and the possibility of being itself the scene of them. Every State ought, therefore, to submit

with cheerfulness to such indulgences to others as itself may, in a little time, be in need of. He had been a witness of the temper of his own State (Virginia) on this occasion. It was understood by the Legislature that the real object of the military preparations on foot was the disturbances in Massachusetts, and that very consideration inspired the ardor which voted, towards their quota, a tax on tobacco, which would not have been granted for scarce any other purpose whatever, being a tax operating very partially, in the opinion of the people of that State who cultivate that article; yet this class of the Legislature were almost unanimous in making the sacrifice, because the fund was considered as the most certain that could be provided.

Fourthly. That it was probable the enlistments, for the reasons given, would be suspended without an order from Congress; in which case the inconvenience suggested would be saved to the United States, and the wishes of Massachusetts satisfied at the same time.

Fifthly. That as no bounty was given for the troops, and they could be dismissed at any time, the objections drawn from the consideration of expense would have but little force.

Sixthly. That it was contended for a continuance of the apparent aid of Congress, for only three or four weeks, the members from Massachusetts themselves considering that as a sufficient time.

After the rejection of the motion, as stated on the Journal, a dispute arose whether the vote should be entered among the secret or public proceedings. Mr. PINCKNEY insisted that, in the former case, his view,

which was to justify himself to his constituents, would be frustrated. Most of those who voted with him were opposed to an immediate publication. The expedient of a temporary concealment was proposed as answering all purposes.¹²⁷

TUESDAY, FEBRUARY 20TH.

Nothing of consequence was done.

WEDNESDAY, FEBRUARY 21st.

The Report of the Convention at Annapolis, in September, 1786, had been long under the consideration of a committee of Congress for the last year, and was referred over to a grand committee of the present year. The latter committee, after considerable difficulty and discussion, agreed on a report, by a majority of *one* only, (see the Journal,)¹²⁸ which was made a few days ago to Congress, and set down as the order for this day. The Report coincided with the opinion held at Annapolis, that the Confederation needed amendments, and that the proposed Convention was the most eligible means of effecting them. The objections which seemed to prevail against the recommendation of the Convention by Congress, were, with some, that it tended to weaken the Federal authority by lending its sanction to an extra-constitutional mode of proceeding; with others, that the interposition of Congress would be considered by the jealous as betraying an ambitious wish to get power into their hands by any plan whatever

that might present itself. Subsequent to the Report, the Delegates from New York received instructions from its Legislature to move in Congress for a recommendation of a convention; and those from Massachusetts had, it appeared, received information which led them to suppose it was becoming the disposition of the Legislature of that State to send deputies to the proposed Convention, in case Congress should give their sanction to it. There was reason to believe, however, from the language of the instruction from New York, that her object was to obtain a new convention, under the sanction of Congress, rather than to accede to the one on foot; or perhaps, by dividing the plans of the States in their appointments, to frustrate all of them. The latter suspicion is in some degree countenanced by their refusal of the impost a few days before the instruction passed, and by their other marks of an unfederal disposition. The Delegates from New York, in consequence of their instructions, made the motion on the Journal to postpone the Report of the Committee, in order to substitute their own proposition. Those who voted against it considered it as liable to the objection above mentioned. Some who voted for it, particularly Mr. MADISON, considered it susceptible of amendment when brought before Congress; and that if Congress interposed in the matter at all, it would be well for them to do it at the instance of a State, rather than spontaneously. This motion being lost, Mr. DANE, from Massachusetts, who was at bottom unfriendly to the plan of a convention, and had dissuaded his State from coming into it, brought forward a proposition, in a different

form, but liable to the same objection with that from New York. After some little discussion, it was agreed on all sides, except by Connecticut, who opposed the measure in every form, that the resolution should pass as it stands on the Journal, sanctioning the proceedings and appointments already made by the States, as well as recommending further appointments from other States, but in such terms as do not point directly to the former appointments.

It appeared from the debates, and still more from the conversation among the members, that many of them considered this Resolution as a deadly blow to the existing Confederation. Doctor JOHNSON, who voted against it, particularly declared himself to that effect. Others viewed it in the same light, but were pleased with it as the harbinger of a better confederation.

The reserve of many of the members made it difficult to decide their real wishes and expectations from the present crisis of our affairs. All agreed and owned that the Federal Government, in its existing shape, was inefficient and could not last long. The members from the Southern and Middle States seemed generally anxious for some republican organization of the system which would preserve the Union, and give due energy to the government of it. Mr. BINGHAM alone avowed his wishes that the Confederacy might be divided into several distinct confederacies, its great extent and various interests being incompatible with a single government. The Eastern members were suspected by some of leaning towards some anti-republican establishment, (the effect of their late confusions,) or of

being less desirous or hopeful of preserving the unity of the empire. For the first time the idea of separate confederacies had got into the newspapers. It appeared to-day under the Boston head. Whatever the views of the leading men in the Eastern States may be, it would seem that the great body of the people, particularly in Connecticut, are equally indisposed either to dissolve or divide the Confederacy, or to submit to any anti-republican innovations.¹²⁹

Nothing noted till

TUESDAY, MARCH 13TH.

Col. GRAYSON and Mr. CLARK having lately moved to have the military stores at Springfield, in Massachusetts, removed to some place of greater security, the motion was referred to the Secretary at War; who this day reported against the same, as his report will show. No opposition was made to the Report, and it seemed to be the general sense of Congress that his reasons were satisfactory. The movers of the proposition, however, might suppose the thinness of Congress (eight States only being present) to bar any hope of successful opposition.

Memorandum.—Called with Mr. Bingham to-day on Mr. Guardoqui, and had a long conversation touching the Western country, the navigation of the Mississippi, and commerce; as these objects relate to Spain and the United States. Mr. BINGHAM opened the conversation with intimating that there was reason to believe the Western people were exceedingly alarmed at the idea of the projected treaty

which was to shut up the Mississippi, and were forming committees of correspondence, &c., for uniting their councils and interests. Mr. Guardoqui, with some perturbation, replied, that, as a friend to the United States, he was sorry for it, for they mistook their interest; but that as the Minister of Spain he had no reason to be so. The result of what fell in the course of the conversation from Mr. Madison and Mr. Bingham was, that it was the interest of the two nations to live in harmony; that if Congress were disposed to treat with Spain on the ground of a cession of the Mississippi, it would be out of their power to enforce the treaty; that an attempt would be the means of populating the western country with additional rapidity; that the British had their eye upon that field, would countenance the separation of the western from the eastern part of North America, promote the settlement of it, and hereafter be able to turn the force springing up in that quarter against Spanish America, in co-operation with their naval armaments; that Spain offered nothing in fact to the United States in the commercial scale which she did not grant to all the other nations from motives of interest.

Mr. Guardoqui would not listen to the idea of a right to the navigation of the Mississippi by the United States, contending that the possession of the two banks at the mouth shut the door against any such pretension. Spain never would give up this point. He lamented that he had been here so long without effecting any thing; and foresaw that the consequences would be very disagreeable.

What would those consequences be?—He evaded

an answer by repeating general expressions. Spain could make her own terms, he said, with Great Britain. He considered the commercial connection proposed as entirely in favor of the United States, and that in a little time the ports of Spain would be shut against fish. He was asked, whether against all fish, or only against fish from the United States? From all places not in treaty, he said, with Spain. Spain would act according to her own ideas. She would not be governed by other people's ideas of her interest.

He was very sorry for the instructions passed by Virginia; he foresaw bad consequences from them. He had written to soften the matter as well as he could, but that troops and stores would certainly reinforce New Orleans in consequence of the Resolutions.

He had not conferred at all with the Minister of Foreign Affairs since October, and did not expect to confer again. He did not expect to remain much longer in America. He wished he might not be a true prophet; but it would be found that we mistook our interest, and that Spain would make us feel the vulnerable side of our commerce by abridging it in her ports.

With an air of ostensible jocoseness, he hinted that the people of Kentucky would make good Spanish subjects, and that they would become such for the sake of the privilege annexed to that character.

He seemed to be disposed to make us believe that Spain and Britain understood one another; that he knew the views of Great Britain in holding the Western posts; and that Spain had it in her power

to make Great Britain bend to her views. He affected a mysterious air on this point, which only proved that he was at a loss what to say to the probability and tendency of a connection between Great Britain and the Western settlements, in case the Mississippi should be given up by Congress.

He intimated that Spain could not grant any inlet of the American trade by *treaty*; but that, in case of a treaty, trade through the Mississippi, as well as other channels, would be winked at.

In speaking of the Mississippi and the right of Spain, he alluded to the case of the Tagus, which Spain had never pretended to a right of navigating through Portugal. It was observed to him, that, in estimating the rights of nations in such cases, regard must be had to their respective proportions of territory on the river. Suppose Spain held only five acres on each side at the mouth of the Mississippi, would she pretend to an exclusive right in such case? He said that was not the case; Spain had a great proportion. *How much?* After some confusion and hesitation, he said, she claimed at least—as far as the Ohio. We smiled, and asked how far eastwardly from the Mississippi? He became still more at a loss for an answer, and turned it off by insinuating that he had conversed on that matter with the Secretary of Foreign Affairs.

He was reminded of the doctrine maintained by Spain in 1608, as to the Scheldt. He seemed not to have known the fact, and resolved it into some political consideration of the times.

He was asked, whether the partition of the British Empire could deprive this part of it of the rights

appertaining to the King of Great Britain as King of this country; and even whether the rupture of Great Britain and Spain could deprive, in justice, the United States of rights which they held under the Treaty of 1763, whilst they remained a part of the British Empire? Whether, in case no such rupture had happened, the Treaty between Spain and that part of the Empire would have been dissolved by the Revolution? &c., &c. He did not seem well to understand the principles into which such questions resolved themselves, and gave them the go-by, referring the claim of Spain principally to her conquests of the British possessions in North America.

He betrayed strongly the anxiety of Spain to retard the population of the Western country; observing that whenever sufficient force should arise therein, it would be impossible for it to be controlled; that any conciliating measures that might be taken now, would have little effect on their temper and views fifty or an hundred years hence, when they should be in force.

When we rose to take leave, he begged us to remember what he had said as to the inflexibility of Spain on the point of the Mississippi, and the consequences to America of her adherence to her present pretensions.¹⁰⁰

Nothing noted till

TUESDAY, MARCH 20TH.

Mr. JAY's report on the Treaty of Peace taken up.

Mr. YATES objected to the first resolution, which declares the Treaty to be a law of the land. He said the States, or at least his State, did not admit it to be such until clothed with legal sanction. At his request he was furnished with a copy of the resolution, for the purpose of consulting such as he might choose.

WEDNESDAY, MARCH 21ST.

The subject of yesterday resumed.

Mr. YATES was now satisfied with the resolutions as they stood. The words "constitutionally made," as applied to the Treaty, seemed to him, on consideration, to qualify sufficiently the doctrine on which the resolution was founded.

The second and third resolutions, urging on the States a repeal of all laws contravening the Treaty, (first, that they might not continue to *operate* as violations of it; secondly, that questions might be avoided touching their validity,) underwent some criticisms and discussions.

Mr. VARNUM and Mr. MITCHELL thought they did not consist with the first, which declared such laws

to be void, in which case they could not *operate* as violations.

Mr. MADISON observed, that a repeal of those contravening laws was expedient, and even necessary, to free the courts from the bias of their oaths, which bound the judges more strongly to the State than to the Federal authority. A distinction too, he said, might be started possibly between laws prior and laws subsequent to the Treaty; a repealing effect of the Treaty on the former not necessarily implying the nullity of the latter. Supposing the Treaty to have the validity of a law *only*, it would repeal all antecedent laws. To render succeeding laws void, it must have more than the *mere* authority of a law. In case these succeeding laws, contrary to the Treaty, should come into discussion before the courts, it would be necessary to examine the foundation of the Federal authority, and to determine whether it had the validity of a Constitution, paramount to the legislative authority in each State. This was a delicate question, and studiously to be avoided, as it was notorious that, although in some of the States the Confederation was incorporated with, and had the sanction of, their respective constitutions, yet in others it received a legislative ratification only, and rested on no other basis. He admitted, however, that the word "*operate*" might be changed for the better, and proposed, in its place, the words "*be regarded,*" as violations of the Treaty,—which was agreed to without opposition.

Mr. KING, in the course of the business, observed, that a question had been raised in New York, whether stipulations, as they might affect citizens

only, and not foreigners, could restrain the States from legislating with respect to the former; and supposed that such stipulations could not.

The resolutions passed unanimously.¹⁸

Nothing till

FRIDAY, MARCH 23RD.

The Report for reducing salaries agreed to, as amended, unanimously. The proposition for reducing the salary of the Secretary of Foreign Affairs to three thousand dollars was opposed by Mr. KING and Mr. MADISON, who entered into the peculiar duties and qualifications required in that office, and its peculiar importance. Mr. MITCHELL and Mr. VARNUM contended, that it stood on a level with the Secretaryship to Congress. The yeas and nays were called on the question, and it was lost. A motion was then made to reduce the salary of four thousand, to three thousand five hundred. Mr. CLARK, who had been an opponent to any reduction, acceded to this compromise. Mr. KING suffered his colleague to vote in the affirmative. There being six States for reducing to three thousand five hundred, and Mr. CARRINGTON being on the same side, in opposition to Mr. GRAYSON, Mr. MADISON gave up his opinion to so great a majority, and the resolution for three thousand five hundred passed. The preceding yeas and nays on the motions for reducing to three thousand was then withdrawn, and no entry made of it. It seemed to be the general opinion that the salary of the Secretary at War was disproportionately low, and ought to be raised. The Committee would have

reported an augmentation, but conceived themselves restrained by their commission, which was to *reduce*, not to revise, the Civil List.

Nothing of consequence till

WEDNESDAY, MARCH 28TH.

Mr. KING reminded Congress of the motion on the nineteenth day of February for discontinuing the enlistments, and intimated that the state of things in Massachusetts was at present such that no opposition would now be made by the Delegation of that State. A committee was appointed, in general, to consider the military establishment, and particularly to report a proper resolution for stopping the enlistments.

The Virginia Delegates laid before Congress sundry papers from the Executive of that State relating to the seizure of Spanish property by General Clark, and the incendiary efforts on foot in the western country against the Spaniards, &c. No comment was made on them, nor any vote taken.

THURSDAY, MARCH 29TH.

The committee appointed to confer with the Treasury Board on the great business of a fiscal settlement of the accounts of the United States, reported that they be discharged, and the Board instructed to report an ordinance. Mr. KING, in explanation, said, that it was the sense of the Committee and of the Treasury Board both, that commissioners should be appointed with full and final powers to decide on

the claims of the States against the Union, &c. The Report was agreed to *nem. con.*

Sundry papers from the Illinois, complaining of the grievances of that country, which had arrived by a special express, were laid before Congress by the President, and committed.

Mr. MITCHELL, from Connecticut, observed that the papers from Virginia communicated yesterday were of a very serious nature; and showed that we were in danger of being precipitated into disputes with Spain, which ought to be avoided if possible; and moved that these papers might be referred to the Committee on the Illinois papers, which was done without opposition; Mr. KING only observing, that they contained mere information, and did not in his view need any step to be taken on them.

The Virginia Delegates communicated to Mr. Guardoqui the proceedings of the Executive relative to Clark's seizure of Spanish property, at which he expressed much regret as a friend to the United States, though as a Spanish Minister he had little reason to dread the tendency of such outrages. The communication was followed by a free conversation on the Western territory and the Mississippi. The observations of the Delegates tended to impress him,—first, with the unfriendly temper which would be produced in the Western people, both against Spain and the United States, by a concerted occlusion of that river; secondly, with the probability of throwing them into the arms of Great Britain; thirdly, of accelerating the population of that country, after the example of Vermont; fourthly, the danger of such numbers under British influence, as

well to Spanish America as to the Atlantic States; fifthly, the universal opinion of right in the United States to the free use of the river; sixthly, the disappointment of the people of America at an attempt in Spain to make their condition worse, as citizens of an independent State, in amity and lately engaged in a common cause, than as subjects of a formidable and unfriendly power; seventhly, the inefficiency of an attempt in Congress to fulfil a treaty for shutting the Mississippi, and the folly of their entering into such a stipulation; eighthly, that it would be wise in Spain to foresee and provide for events that could not be controlled, rather than to make fruitless efforts to prevent or procrastinate them.

Mr. Guardoqui reiterated his assertion that Spain would never accede to the claim of the United States to navigate the river; secondly, urged that the result of what was said was, that Congress could enter into no treaty at all; thirdly, that the trade of Spain was of great importance, and would certainly be shut against the United States,—affecting to disregard the remark that, if Spain continued to use fish, flour, &c., her interest would restrain her from shutting her ports against the American competition; fourthly, he signified that he had observed the weakness of the Union, and foreseen its probable breach; that he lamented the danger of it, as he wished to see it preserved and strengthened, which was more than *France** or any other nation in Europe did. No reply was made to this remark. The sincerity of his declaration as to his own wishes was not free

* From this it may be inferred that he does not regard France as favorable to the claims of Spain touching the Mississippi.

from suspicion. Fifthly, he laid much stress on the service Spain had rendered the United States during the struggle for their independence, considering it as laying them under great obligations. The reality of the service was not denied, but he was reminded of the interest Spain had in dividing a power which had given the law to the House of Bourbon, and *compelled* Spain to relinquish, as he said, the exclusive use of the Mississippi. Sixthly, in answer to the remark, that Spain was for putting the United States on a worse footing than they stood on as British subjects, he not only mentioned the necessity which had dictated the Treaty of 1763, but contended that the recovery of West Florida made a distinction in the case. It was observed to him that, as the navigable channel of the Mississippi ran between the Island and the western shore, Spain had the same pretext for holding both shores when Florida was a British Colony, as since. He would neither accede to the inference nor deny the fact. Seventhly, he intimated, with a jocular air, the possibility of the Western people becoming Spanish subjects; and, with a serious one, that such an idea had been brought forward to the King of Spain by some person connected with the Western country, but that His Majesty's dignity and character could never countenance it. It was replied, that that consideration was no doubt a sufficient obstacle, but it was presumed, that *such subjects* would not be very convenient to Spain. It would be much more for the interest of Spain that they should be friendly neighbors than refractory subjects. It did not appear that he viewed the matter in a different light.

Eighthly, he disclaimed his having ever assented to, or approved of, any *limited* occlusion of the Mississippi, though in a manner that did not speak a real inflexibility on that point. Ninthly, it appeared clearly that the check to the Western settlements was a favorite object, and that the occlusion of the Mississippi was considered as having that tendency. Tenthly, the futility of many of his arguments and answers satisfied the Delegates that they could not appear convincing to himself, and that he was of course pursuing rather the ideas of his Court than his own.¹³⁰

FRIDAY, MARCH 30TH.

Mr. Jay's report in favor of the admission of Phineas Bond as British Consul for the Middle States, was called for by Mr. CADWALADER. Mr. MADISON said, he was far from being satisfied of the propriety of the measure; he was a friend in general to a liberal policy, and admitted that the United States were more in the wrong in the violation of the Treaty of Peace than Great Britain; but still the latter was not blameless. He thought, however, the question turned on different considerations: first, the facility of the United States in granting privileges to Great Britain without a treaty of commerce, instead of begetting a disposition to conclude such a treaty, had been found, on trial, to be made a reason against it; secondly, the indignity of Great Britain in neglecting to send a public Minister to the United States, notwithstanding the lapse of time since Mr.

Adams's arrival there, gave them no title to favors in that line; and self-respect seemed to require that the United States should at least proceed with distrust and reserve.

Mr. GRAYSON thought, as the Secretary had done, that it would be good policy to admit Mr. Bond, and that it could not be decently, and without offence, refused after the admission of Mr. Temple.

Mr. CLARK said, he was at first puzzled how to vote, as he did not like the admission proposed, on one hand; and, on the other, thought it not decent to refuse it after the admission of Mr. Temple. On reflecting, however, that Mr. Temple was admitted at a time when hopes were entertained of a commercial treaty, which had since vanished, and that the question might be postponed generally without being negatived, he should accede to the idea of doing nothing on the subject.

Mr. VARNUM animadverted on the obnoxious character of Mr. Bond, and conceived that alone a sufficient reason for not admitting him. The postponement was agreed to without any overt dissent except that of Mr. GRAYSON.

The Delegates from North Carolina communicated to Congress sundry papers conspiring with the other proofs of discontent in the Western country at the supposed surrender of the Mississippi, and of hostile machinations against the Spaniards.

It was ordered that they should be referred to the Secretary of Foreign Affairs for his information. It was then moved that the papers relative to the same subjects from Virginia, yesterday referred to a committee, should, after discharging the Committee, be

referred to the Office of Foreign Affairs. Mr. CLARK proposed to add "to report." This was objected to by Mr. KING, and brought on some general observations on the proceedings of Congress in the affair of the Mississippi. It was at length agreed that the reference be made without an instruction to report. Mr. PIERCE then observed that it had been hinted by Mr. MADISON, as proper to instruct the Secretary of Foreign Affairs to lay before Congress the state of his negotiation with Mr. Guardoqui, and made a motion to that effect, which was seconded by several at once.

Mr. KING hoped Congress would not be hurried into a decision on that point, observing that it was a very delicate one. But he did not altogether like it; and yet it was of such a nature that it might appear strange to negative it. He desired that it might at least lie over till Monday.

Mr. MADISON concurred in wishing the same, being persuaded that the propriety of the motion was so clear that nothing could produce dissent, unless it were forcing members into an unwilling decision.

The motion was withdrawn, with notice that it would be renewed on Monday next.¹²⁰

MONDAY, APRIL 2ND.

Mr. PIERCE renewed his motion instructing the Secretary of Foreign Affairs to lay before Congress the state of his negotiation with Mr. Guardoqui, which was agreed to without observation or dissent.

See Journals till

TUESDAY, APRIL 11TH.

Mr. KEARNEY moved that Congress adjourn on the last Friday in April, to meet on the — day of May, in Philadelphia. Georgia, North Carolina, Virginia, Delaware, Pennsylvania, New Jersey and Rhode Island, were for it. The merits of the proposition were not discussed. The friends to it seemed sensible that objections lay against the particular moment at which it was proposed; but considering the greater centrality of Philadelphia, as rendering a removal proper in itself, and the uncertainty of finding seven States present and in the humor again, they waived the objections. The opinion of Mr. MADISON was, that the meeting of the ensuing Congress in Philadelphia ought to be fixed, leaving the existing Congress to remain throughout the Federal year in New York. This arrangement would have been less irritating, and would have had less the aspect of precipitancy or passion, and would have repelled insinuations of personal considerations with the members. The question was agreed to lie over till to-morrow.

WEDNESDAY, APRIL 12TH.

Mr. VARNUM moved that the motion for removing to Philadelphia should be postponed generally. As the assent of Rhode Island was necessary to make seven States, no one chose to press a decision: the postponement was therefore agreed to *nem. con.*, and

the proceedings of yesterday involved the Yeas and Nays on some immaterial points struck from the Journal.

See the Journal till

WEDNESDAY, APRIL 18TH.

It having appeared by the Report of Mr. Jay on the instruction agreed to on Monday, the 2nd instant, and on information referred to him concerning the discontents of the Western people, that he had considered the act of *seven* States as authorizing him to suspend the use of the Mississippi, and that he had accordingly adjusted with Mr. Guardoqui an article to that effect, that he was also much embarrassed by the ferment excited in the Western country by the rumored intention to cede the Mississippi, by which such cession was rendered inexpedient on one side; and, on the other side, by the disinclination in another part of the Union to support the use of the river by arms, if necessary. It was proposed by Mr. MADISON, as an expedient which, if it should answer no other purpose, would at least gain time, that it should be resolved, "That the *present state* of the negotiations with Spain, [meaning the step taken under the spurious authority of seven States,] and of the affairs of the United States, [meaning the temper and proceedings in the Western country,] renders it expedient that the Minister Plenipotentiary at the Court of France should proceed under a special commission to the Court of Madrid, there to make such

representations, and to urge such negotiations, as will be most likely to satisfy the said Court of the friendly disposition of the United States, and to induce it to make such concessions relative to the Southern limit of the said States, and their right to navigate the river Mississippi, and to enter into such commercial stipulations with them, as may most effectually guard against a rupture of the subsisting harmony, and promote the mutual interest of the two nations; and that the Secretary of Foreign Affairs prepare and report the instructions proper to be given to the said Minister, with a proper commission and letters of credence; and that he also report the communications and explanations which it may be advisable to make to Mr. Guardoqui relative to this change in the mode of conducting the negotiation with his Court."

Mr. KING said that he did not know that he should be opposed to the proposition, as it seemed to be a plausible expedient, and as something seemed necessary to be done; but that he thought it proper that Congress should, before they agreed to it, give the Secretary for Foreign Affairs an opportunity of stating his opinions on it, and accordingly moved that it should be referred to him.

Mr. CLARK and Mr. VARNUM opposed the reference, it being improper for Congress to submit a principle, for deciding which no further *information* was wanted, to the opinion of their minister. The reference being, however, at length acceded to by the other friends of the proposition, on the principle of accommodation, it had a vote of seven States.¹²⁴

THURSDAY, APRIL 19TH.

The instructions of Virginia against relinquishing the Mississippi were laid before Congress by the Delegates of that State, with a motion that they should be referred to the Department of Foreign Affairs, by way of information.

The reference was opposed by Mr. KING and Mr. BENSON, as unnecessary for that purpose, the instructions having been printed in the newspapers.

In answer to this, it was observed, that the memorial accompanying the instructions had never been printed; that if it had, no just objection could be thence drawn against an official communication; that if Congress would submit a measure, as they had done yesterday, to the opinion of their Minister, they ought at least to supply him with every fact, in the most authentic manner, which could assist his judgment; and that they had actually referred to the same Minister communications relative to the Western views, less interesting and authentic, and which he had made the basis of a Report to Congress.

The motion was lost, Massachusetts and New York being against it, and Connecticut divided. Mr. MITCHELL, from the latter State, was displeased at the negatives, as indicating a want of candor and moderation on the subject.¹³⁵

MONDAY, APRIL 23RD.

Mr. Jay's report, stating objections against the motion of Mr. MADISON for sending Mr. Jefferson to Madrid, was taken into consideration.

Mr. MADISON observed, that Mr. Jay had not taken up the proposition in the point of view in which it had been penned; and explained what that was, to wit, that it was expedient to retract the step taken for ceding the Mississippi, and to do it in a manner as respectful and conciliating as possible to Spain, and which, at the same time, would procrastinate the dilemma stated by Mr. Jay. He said he was not attached to the expedient he had brought forward, and was open to any other that might be less exceptionable.

Mr. GORHAM avowed his opinion that the shutting the Mississippi would be advantageous to the Atlantic States, and wished to see it shut.

Mr. MADISON animadverted on the illiberality of his doctrine, and contrasted it with the principles of the Revolution, and the language of American patriots.

Nothing was done in the case.

WEDNESDAY, APRIL 25TH.

Mr. MADISON, observing to Congress that he found a settled disinclination in some of the Delegations to concur in any conciliatory expedient for defending the Mississippi against the operation of the vote of *seven States*, and that it was hence become necessary

to attack directly the validity of that measure, to the end that the adversaries to it, and particularly the instructed Delegations, might at least discharge their duty in the case, made the following motion:

Whereas it appears by the Report of the Secretary for the Department of Foreign Affairs, made on the 11th instant, that in consequence of a vote entered into by seven States on the 29th day of August last, he has proceeded to adjust with Mr. Guardoqui an article for suspending the right of the United States to the common use of the river Mississippi below their southern boundary: And whereas it is considered that the said vote of seven States, having passed in a case in which the assent of nine States is required by the Articles of Confederation, is not valid for the purpose intended by it; and that any further negotiations in pursuance of the same may eventually expose the United States to great embarrassments with Spain, as well as excite great discontents and difficulties among themselves: Resolved, therefore, that the Secretary for the said Department be informed that it is the opinion of Congress, that the said vote of seven States ought not to be regarded as authorizing any suspension of the use of the river Mississippi by the United States, and that any expectations thereof, which may have been conceived on the part of Spain, ought to be repressed.

Mr. KING reminded Congress that this motion was barred by the rule that no question should be revived, which had been set aside by the previous question, unless the same States, or an equal number, be present, as were present at the time of such previous question. This rule had been entered into in

consequence of a similar motion made shortly after the vote of seven States had passed. Mr. KING contended, that this rule was a prudent one, and recommended by the practice of all deliberative assemblies, who never suffered questions once agitated and decided, to be repeated at the pleasure of the unsuccessful party.

Mr. MADISON admitted that the rule, if insisted on, was a bar to his motion; but that he had not expected that it would be called up, being so evidently improper in itself, and the offspring of the intemperance which characterized the epoch of its birth. As it was called up, however, it was become necessary that a preliminary motion for its repeal should be made, and which he accordingly made. His objections against the rule were—

First, that it was an attempt in one Congress to bind their successors, which was not only impracticable in itself, but highly unreasonable in the very instance which gave birth to the rule. Twelve States were on the floor at the time; seven were for the previous question, five against it. The casting number, therefore, was but two. Was it not unreasonable that eleven States, unanimously of a contrary opinion, should be controlled by this small majority when twelve were present; and yet such would be the operation of the rule, if eleven States only should at any time happen to be present, although they should be unanimous in the case.

Secondly, the operation of the vote in another respect was still more reprehensible. In the former case the eleven States, or even seven, could extricate themselves by a repeal of the rule. In case a

number less than seven should wish to justify themselves by any particular motion, they might be precluded by such a rule. Six States, instructed by their constituents to make a particular proposition, or to enter a particular protest, might be thus fettered by a stratagem of seven States. In the case actually depending, three States were instructed, and two, if not three, more ready to vote with them.

Thirdly, the practice of other assemblies did not reach this case, and if it did the reason of it would be inapplicable. The restriction in other assemblies related to the same assembly, and even to the same session. Here the restriction is perpetual. In legislative assemblies, no great inconvenience would happen from a suspension of a law for a limited time. In Executive councils, which are involved in the constitution of Congress, and particularly in military operations and negotiations, the vicissitude of events would often govern, and a measure improper on one day might become necessary the next.

Mr. CLARK and Mr. VARNUM contended that the rules of the Congress for the last year were not in force during the present, and supposed that a repeal was unnecessary.

In the course of this discussion, the question as to the validity of the vote of seven States, and the merits of the proposition of Mr. MADISON, barred by the rule, incidentally came into view. The advocates of the latter did not maintain the validity, or rather studiously avoided giving an opinion on it. They urged only the impropriety of any exposition by Congress of their own powers, and of the validity of their own acts. They were answered, that the

exposition must be somewhere, and more properly with Congress than with one of their *Ministerial* officers; that it was absurd to say that Congress, with information on their table that a treaty with a foreign nation was going on without a constitutional sanction, should forbear, out of such scruple, to assert it, and prevent the dilemma which would ensue, of either recognizing an unconstitutional proceeding, or of quarrelling with the King of Spain; that Congress had frequently asserted and expounded their own powers, and must frequently be obliged to do so. What was the late address to the States on the subject of the Treaty of Peace, but an exposition and vindication of their constitutional powers? That, in the vote itself, the entry, "so it was resolved in the affirmative," asserted it to be valid and constitutional; the vote of seven States when nine were required being otherwise to be entered, like a vote of six States, in the negative.

It appearing to be the inflexible predetermination of the advocates for the Spanish Treaty to hold fast every advantage they had got, the debate was shortened, and an adjournment took place without any question.

NOTE.—Mr. King, in conversation repeatedly, though not in public debate, maintained that the entry, "so it was resolved in the affirmative," decided nothing as to the validity of the vote of seven States for yielding the Mississippi; and that they amounted to no more than a simple affirmation, or summary repetition, of the fact that the said seven States voted in the manner stated!!!

THURSDAY, APRIL 26TH.

The question on the motion to repeal the rule was called for after some little conversation. Mr. CLARK moved that it might be postponed, which was agreed to.

Nothing further was done in this business till Wednesday, May the second, when Mr. MADISON left New York for the Convention to be held in Philadelphia.

It was considered, on the whole, that the project for shutting the Mississippi was at an end—a point deemed of great importance in reference to the approaching Convention for introducing a change in the Federal Government, and to the objection to an increase of its powers, foreseen from the jealousy which had been excited by that project.¹³⁸

LETTERS
OF
JAMES MADISON,
SUBSEQUENT TO THE DEBATES OF 1787.

LETTERS

TO NOVEMBER 2, 1788,

SUBSEQUENT TO THE DEBATES OF 1787.

TO EDMUND RANDOLPH.

New York, February 15, 1787.

DEAR SIR,

Having but recently got here, I had not time to add a few private lines as I wished, to our public letter. We have as yet no definitive information from Massachusetts touching the operations of General Lincoln. Little doubt, however, is entertained that the insurrection will be effectually quelled. The Legislature of that State seem to have taken great spirit from the prospect. They have come at length to the resolution of declaring the existence of a rebellion, and, it is said, mean to disarm and disfranchise all who have been engaged in it. We have no information from any other quarter, and I have not been here long enough to collect any just idea of the general politics.

TO EDMUND RANDOLPH.

New York, February 18, 1787.

DEAR SIR,

Congress have received no late intelligence either from Mr. Jefferson or Mr. Adams. Nor have any interesting measures yet taken place since they have been assembled in force. Those in expectation re-

late to,—first, the Mississippi. On this subject I have no information to give, not a word having passed concerning it since my arrival. Secondly, the treaty of peace. This subject is now depending in the form of a Report from Mr. Jay. I find what I was not before apprized of, that infractions on the part of the United States preceded even the violation on the other side, in the instance of the negroes. If Congress should be able to agree on any measures for carrying the treaty into execution, it seems probable that the fundamental one will be a summons of the States to remove all legal impediments which stand at present in the way. There seems to be no reason to believe that Great Britain will comply on any other conditions than those signified in the communication of Lord Carmarthen to Mr. Adams. Thirdly, the proposed Convention in May. A great disagreement of opinion exists as to the expediency of a recommendation from Congress to the backward States in favor of the meeting. It would seem as if some of the States disliked it because it is an extra-constitutional measure, and that their dislike would be removed or lessened by a sanction from Congress to it. On the other hand it is suggested, that some would dislike it the more if Congress should appear to interest themselves in it. I observe in a late newspaper, that instructions are to be brought forward in the Legislature here to the Delegates in Congress, to propose and urge their interposition in favor of the Convention. What the sense of the State is on the merit of the project, is not perfectly clear. A refusal a few days ago, by a large majority, to grant the impost, does

not augur well. Hopes, however, are entertained. The four States north of it are also still to declare their sentiments. Massachusetts, it is now expected, will appoint deputies to the Convention, and her example will be much respected by the three others. The intermediate States from New York to South Carolina, Maryland excepted, have made appointments; and Maryland has determined to do so, though she has not yet agreed on the individuals. South Carolina and Georgia are supposed by their Delegates here to be well disposed to back the plan. Fourthly, the troops raising under the authority of Congress in Massachusetts. The prospect of a close to the turbulent scenes in that quarter has produced a motion for stopping the enlistments. The Delegates from the New England States generally, and from Massachusetts in particular, are anxious that the motion should be suspended for a few weeks, that the influence of the military preparations of the United States may be continued in favor of their State measures, some of which are likely to be pretty vigorous, and to try the strength of their Government. It appears, besides, that the ringleader of the insurrection has not yet been apprehended, and, according to report, still harbours mischief. We begin to experience already the inconveniency of the clause in our treaties stipulating the privileges of the most favored nation. Mr. Van Berkel has got hold of the late act of our Assembly in favor of French wines and brandies brought in French bottoms, and contends that it violates the Dutch treaty. He has been told that these privileges are a requital for equal ones granted on the

side of France; and that Holland must pay the price before she can claim the concession. His answer is, that nothing is said about compensation in the treaty; that it is expressly stated that the Dutch shall pay no higher duties than the most favored nation is, or shall be, obliged to pay. We tell him, the compensation is necessarily implied; and that a contrary interpretation would render the treaty too inconvenient to both the parties to be supposed the true one. He persists in alleging that it is the true one, that the treaty pursues the carrying policy marked by a like stipulation in every treaty where it could be introduced, and that the clause relative to compensation was intentionally omitted. He means to bring the matter before Congress, and to direct the Dutch Consul to protest against the duties in case of their being exacted. He professes and appears, notwithstanding, to be anxious for an amicable adjustment, and would have forborne to apply to Congress if we could have authorized a hope that the law would not be actually put in execution against Dutch cargoes. As it is, he means to put a copy of the note to Congress in our hands, that it may be communicated to the State. I have not yet thoroughly investigated the question. The letter of the treaty is on his side, the equity of it on ours. If his construction be admitted, the United States could not purchase the West India trade of Great Britain or France, without letting in Holland to the privileges granted on our part, although she should keep her ports in that quarter shut against us,—a consideration not only unjust towards us, but creating objections on the part of Great Britain or France. A

very dismal account of Clark's proceedings in the Western country has been informally laid before Congress, and will be forwarded to your department. If the information be well founded, you will probably receive a confirmation through other channels.¹²⁷

TO EDMUND RANDOLPH.

New York, February 25, 1787.

DEAR SIR,

The Secretary's despatch will have communicated to you the Resolution of Congress giving their sanction to the proposed meeting in May next. At the date of my last, a great division of opinion prevailed on the subject, it being supposed by some of the States that the interposition of Congress was necessary to give regularity to the proceeding, and by others that a neutrality on their part was a necessary antidote for the jealousy entertained of their wishes to enlarge the powers within their own administration. The circumstance which conduced much to decide the point, was an instruction from New York to its Delegates, to move in Congress for some recommendation of a Convention. The style of the instruction makes it probable that it was the wish of this State to have a new Convention instituted, rather than the one on foot recognized. Massachusetts seemed also skittish on this point. Connecticut opposed the interposition of Congress altogether. The act of Congress is so expressed as to cover the proceedings of the States, which have already pro-

vided for the Convention, without any pointed recognition of them.

Our situation is becoming every day more and more critical. No money comes into the Federal Treasury ; no respect is paid to the Federal authority ; and people of reflection unanimously agree that the existing Confederacy is tottering to its foundation. Many individuals of weight, particularly in the Eastern district, are suspected of leaning toward monarchy. Other individuals predict a partition of the States into two or more confederacies. It is pretty certain that, if some radical amendment of the single one cannot be devised and introduced, one or other of these revolutions, the latter no doubt, will take place. I hope you are bending your thoughts seriously to the great work of guarding against both.¹²⁸

TO EDMUND RANDOLPH.

New York, March 11, 1787.

DEAR SIR,

The Governor of this State is just returned from his trip to the upper parts of it. He found every thing quiet in the place to which suspicions and reports carried him. He says also, as I am told, that Lincoln has restored a calm in that part of Massachusetts which borders on New York, as he had before done in the other disaffected parts. Notwithstanding these favorable accounts, there is reason to apprehend that every thing is not yet right in

Massachusetts, and that the discontents are rather silenced than subdued. The measures taken by the Legislature of that State prove that such is their view of the matter. They have disfranchized a considerable proportion of the disaffected voters; have voted a military force for the purpose of maintaining the tranquillity of the commonwealth; and their Delegates, in pursuance of instructions, have within a few days past, put on the Journals of Congress a representation including an assertion of right to Federal support in case of necessity.

The appointments for the Convention are still going on. Georgia has appointed her Delegates to Congress, her Representatives in that body also. The gentleman from that State here at present are Colonel Few, and Major Pierce, formerly Aid to General Green. I am told just now, that South Carolina has appointed the two Rutledges and Major Butler. Colonel Hamilton, with a Mr. Yates and a Mr. Lansing are appointed by New York. The two latter are supposed to lean too much towards State considerations to be good members of an assembly which will only be useful in proportion to its superiority to partial views and interests. Massachusetts has also appointed. Messrs. Gorham, Dana, King, Gerry and Strong compose her deputation. The resolution under which they are appointed restrains them from acceding to any departure from the principle of the fifth Article of Confederation. It is conjectured that this fetter, which originated with their Senate, will be knocked off. Its being introduced at all, denotes a very different spirit in that quarter from what some had been led

to expect. Connecticut, it is now generally believed, will come into the measure.

Nothing has been yet done in the principal business before Congress; and I fear the number of States will not increase so far as to be competent to it. The negotiations with Spain are carried on, if they go on at all, entirely behind the curtain. The business has been put into such a form that it rests wholly with Jay how far he will proceed with Guardoqui, and how far he will communicate with Congress. The instructed States are hence under some embarrassment. They cannot demand information, of right; they are unwilling, by asking it of favor, to risk a refusal; and they cannot resort to the present thin Congress with any hope of success. Should Congress become pretty full, and Pennsylvania follow North Carolina, Virginia, and New Jersey, in giving instructions, the case may be altered.¹²

TO THOMAS JEFFERSON.

New York, March 19, 1787.

DEAR SIR,

Congress have continued so thin as to be incompetent to the dispatch of the more important business before them. We have at present nine States, and it is not improbable that something may now be done. The report of Mr. Jay on the mutual violations of the treaty of peace will be among the first subjects of deliberation. He favors the British claim of interest, but refers the question to the court. The amount of the report, which is an able one, is, that

the treaty should be put in force as a law, and the exposition of it left, like that of other laws, to the ordinary tribunals.

The Spanish project sleeps. A perusal of the attempt of seven States to make a new treaty, by repealing an essential condition of the old, satisfied me that Mr. Jay's caution would revolt at so irregular a sanction. A late accidental conversation with Guardoqui proved to me that the negotiation is arrested. It may appear strange that a member of Congress should be indebted to a foreign Minister for such information, yet such is the footing on which the intemperance of party has put the matter, that it rests wholly with Mr. Jay how far he will communicate with Congress, as well as how far he will negotiate with Guardoqui. But although it appears that the intended sacrifice of the Mississippi will not be made, the consequences of the intention and the attempt are likely to be very serious. I have already made known to you the light in which the subject was taken up by Virginia. Mr. Henry's disgust exceeds all measure, and I am not singular in ascribing his refusal to attend the Convention to the policy of keeping himself free to combat or espouse the result of it according to the result of the Mississippi business, among other circumstances. North Carolina also has given pointed instructions to her Delegates; so has New Jersey. A proposition for the like purpose was a few days ago made in the Legislature of Pennsylvania, but went off without a decision on its merits. Her Delegates in Congress are equally divided on the subject. The tendency of this project to foment distrust among the Atlantic

States, at a crisis when harmony and confidence ought to have been studiously cherished, has not been more verified than its predicted effect on the ultramontane settlements. I have credible information that the people living on the Western waters are already in great agitation, and are taking measures for uniting their consultations. The ambition of individuals will quickly mix itself with the original motives of resentment and interest. Communication will gradually take place with their British neighbours. They will be led to set up for themselves, to seize on the vacant lands, to entice emigrants by bounties and an exemption from Federal burthens, and in all respects play the part of Vermont on a large theatre. It is hinted to me that British partizans are already feeling the pulse of some of the Western settlements. Should these apprehensions not be imaginary, Spain may have equal reason with the United States to rue the unnatural attempt to shut the Mississippi. Guardoqui has been admonished of the danger, and, I believe, is not insensible to it, though he affects to be otherwise, and talks as if the dependence of Britain on the commercial favors of his Court would induce her to play into the hands of Spain. The eye of France also cannot fail to watch over the western prospects. I learn from those who confer here with Otto and De la Forest, that they favor the opening of the Mississippi, disclaiming at the same time any authority to speak the sentiments of their Court. I find that the Virginia Delegates, during the Mississippi discussions last fall, entered into very confidential interviews with these gentlemen. In one of them the

idea was communicated to Otto of opening the Mississippi for exports but not for imports, and of giving to France and Spain some exclusive privileges in the trade. He promised to transmit it to Vergennes, to obtain his sentiments on the whole matter, and to communicate them to the Delegates. Not long since Grayson called on him, and revived the subject. He assured Grayson that he had received no answer from France, and signified his wish that you might pump the Count de Vergennes, observing *that he would deny to you his having received any information from America.* I discover, through several channels, that it would be very grateful to the French politicians here to see our negotiations with Spain shifted into your hands, and carried on under the mediating auspices of their Court.

Van Berkel has remonstrated against the late acts of Virginia, giving privileges to French wines and brandies in French bottoms, contending that the Dutch are entitled by their treaty to equal exemptions with the most favored nation, without being subject to a compensation for them. Mr. Jay has reported against this construction, but considers the act of Virginia as violating the treaty;—first, as it appears to be gratuitous, not compensatory, on the face of it; secondly, because the States have no right to form tacit compacts with foreign nations. No decision of Congress has yet taken place on the subject.

The expedition of General Lincoln against the insurgents has effectually succeeded in dispersing them. Whether the calm which he has restored will be durable or not, is uncertain. From the pre-

cautions taking by the Government of Massachusetts, it would seem as if their apprehensions were not extinguished. Besides disarming and *disfranchising*, for a limited time, those who have been in arms, as a condition of their pardon, a military corps is to be raised to the amount of one thousand or fifteen hundred men, and to be stationed in the most suspected districts. It is said that, notwithstanding these specimens of the temper of the Government, a great proportion of the offenders choose rather to risk the consequences of their treason, than submit to the conditions annexed to the amnesty; that they not only appear openly on public occasions, but distinguish themselves by badges of their character; and that this insolence is in many instances countenanced by no less decisive marks of popular favor than elections to local offices of trust and authority.

A proposition is before the Legislature of this State, now sitting, for renouncing its pretensions to Vermont, and urging the admission of it into the Confederacy. The different parties are not agreed as to the form in which the renunciation should be made, but are likely to agree as to the substance. Should the offer be made, and should Vermont not reject it altogether, I think they will insist on two stipulations at least;—first, that their becoming parties to the Confederation shall not subject their boundaries, or the rights of their citizens, to be questioned under the ninth Article; secondly, that they shall not be subject to any part of the public debts already contracted.

The Geographer and his assistants have returned surveys on the Federal lands to the amount of about

eight hundred thousand acres, which it is supposed would sell pretty readily for public securities, and some of it, lying on the Ohio, even for specie. It will be difficult, however, to get proper steps taken by Congress, so many of the States having lands of their own at market. It is supposed that this consideration had some share in the zeal for shutting the Mississippi. New Jersey, and some others having no Western lands, which favored this measure, begin now to penetrate the secret.

A letter from the Governor of Virginia informs me, that the project of paper-money is beginning to recover from the blow given it at the last session of the Legislature. If Mr. Henry espouses it, of which there is little doubt, I think an emission will take place.¹⁰

TO EDMUND RANDOLPH.

New York, March 25, 1787.

DEAR SIR,

I have had the pleasure of your two favors of the first and seventh instant. The refusal of Mr. Henry to join in the task of revising the Confederation is ominous; and the more so, I fear, if he means to be governed by the event which you conjecture. There seems to be little hope, at present, of being able to quash the proceedings relative to the affair which is so obnoxious to him;* though on the other hand, there is reason to believe that they will never reach the object at which they aimed.

* Jay's project for shutting the Mississippi for twenty-five years.

Congress have not changed the day for meeting at Philadelphia, as you imagine. The act of Virginia, I find, has done so in substituting the second day for the second *Monday* in May, the time recommended from Annapolis.

I cannot suppose that Mr. Otto has equivocated in his explanation to the public touching the Florida. Nothing of that subject has been mentioned here, as far as I know. Supposing the exchange in question to have really been intended, I do not see the inference to be unfavorable to France. Her views, as they occur to me, would most probably be to conciliate the Western people, in common with the Atlantic States, and to extend her commerce, by reversing the Spanish policy. I have always wished to see the Mississippi in the hands of France, or of any nation which would be more liberally disposed than the present holders of it.

Mr. Jay's report on the treaty of peace has at length been decided on. It resolves and declares, that the treaty, having been constitutionally formed, is the law of the land, and urges a repeal of all laws contravening it, as well to stop the complaints of their existing as legal impediments, as to avoid needless questions touching their validity. Mr. Jay is preparing a circular address to accompany the Resolutions, and the latter will not be forwarded till the former is ready.¹⁴¹

TO EDMUND RANDOLPH.

New York, April 2, 1787.

DEAR SIR,

I have your favor of the fifteenth ultimo. All of preceding date have already been acknowledged. The information which you wished to go to Mr. Guardoqui has been communicated. The real impression made by it cannot easily be seen through the political veil. If he views the state of Western affairs in the true light, his representations to Spain must convince her that she has no option but between concession and hostilities. It is to be lamented that so many circumstances have concurred to enlist her pride on the side of the latter alternative.

The papers accompanying the advice of the Council as to Clark, have been laid before Congress. Similar communications have also been made from North Carolina. The impression they have made is not unfriendly, I conjecture, to the rights of the Western people, and it is probable that a rediscussion of these may be produced by the occasion. Our strength, however, is unequal to any effectual vote. A reinforcement from either Maryland or South Carolina would, I believe, supply the defect, Pennsylvania having lately appointed Armstrong in the place of Pettit, which throws that State into the right scale. We have some hopes also of Rhode Island. She begins to see the policy of some States in her neighborhood, in excluding the Federal territory from the market at which they offer their own.

New Jersey has fully entered into this view of the matter, and feels no small indignation at it.

Rhode Island has negatived a motion for appointing deputies to the Convention, by a majority of twenty-two votes. Nothing can exceed the wickedness and folly which continue to reign there. All sense of character as well as of right is obliterated. Paper-money is still their idol, though it is debased to eight for one.¹⁴⁸

TO EDMUND RANDOLPH.

New York, April 8, 1787.

DEAR SIR,

Your two favors of the twenty-second and twenty-seventh of March, have been received since my last. In a preceding one you ask, what tribunal is to take cognizance of Clark's offence? If our own laws will not reach it, I see no possibility of punishing it. But will it not come within the act of the last session concerning treasons and *other offences* committed without the commonwealth? I have had no opportunity yet of consulting Mr. Otto on the allegation of Oster touching the marriage of French subjects in America. What is the *conspicuous prosecution* which you suspect will shortly display a notable instance of perjury?

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure, as signified in one of your letters, with the probability that some leading propositions at least would be expect-

ed from Virginia, had engaged me in a closer attention to the subject than I should otherwise have given. I will just hint the ideas that have occurred, leaving explanations for our interview.

I think with you, that it will be well to retain as much as possible of the old Confederation, though I doubt whether it may not be best to work the valuable articles into the new system, instead of engrafting the latter on the former. I am also perfectly of your opinion, that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States, as that a partial adoption will be binding. Particular States may view different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratifications of both would go for nothing. I have not, however, examined this point thoroughly. In truth, my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground can be taken,

which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is, I think, a change in the principle of representation. According to the present form of the Union, an equality of suffrage, if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress, is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the States, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia.

Let the national Government be armed with a positive and complete authority in all cases where uniform measures are necessary, as in trade, &c., &c. Let it also retain the powers which it now possesses.

Let it have a negative, in all cases whatsoever, on the Legislative acts of the States, as the King of Great Britain heretofore had. This I conceive to be essential and the least possible abridgement of the State sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States. There has been no moment since the peace at which the Federal assent would have been given to paper-money, &c., &c.

Let this national supremacy be extended also to the Judiciary department. If the Judges in the last resort depend on the States, and are bound by their

oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the tribunals to the policy or prejudices of the States. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other States. The admiralty jurisdiction may be fully submitted to the National Government.

A Government formed of such extensive powers ought to be well organized. The Legislative department may be divided into two branches. One of them to be chosen every —— years by the Legislatures or the people at large; the other to consist of a more select number, holding their appointments for a longer term, and going out in rotation. Perhaps the negative on the State laws may be most conveniently lodged in this branch. A Council of Revision may be superadded, including the great ministerial officers.

A national Executive will also be necessary. I have scarcely ventured to form my own opinion yet, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed.

An article ought to be inserted expressly guaranteeing the tranquillity of the States against internal as well as external dangers.

To give the new system its proper energy, it will be desirable to have it ratified by the authority of the people, and not merely by that of the Legislatures.

I am afraid you will think this project, if not
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travagant, absolutely unattainable and unworthy of being attempted. Conceiving it myself to go no further than is essential, the objections drawn from this source are to be laid aside. I flatter myself, however, that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the States, and those too of most influence. The northern States will be reconciled to it by the *actual* superiority of their populousness; the Southern by their *expected* superiority on this point. This principle established, the repugnance of the large States to part with power will in a great degree subside, and the smaller States must ultimately yield to the predominant will. It is also already seen by many, and must by degrees be seen by all, that, unless the Union be organized efficiently on republican principles, innovations of a much more objectionable form may be obtruded, or, in the most favorable event, the partition of the Empire, into rival and hostile confederacies will ensue.

TO EDMUND RANDOLPH.

New York, April 15, 1787.

DEAR SIR,

Your favor of the fourth of April has been received since my last. The probability of General Washington's coming to Philadelphia is, in one point of view, flattering. Would it not, however, be well for him to postpone his actual attendance, until some judgment can be formed of the result of the meeting?

It ought not to be wished by any of his friends that he should participate in any abortive undertaking. It may occur, perhaps, that the delay would deprive the Convention of his presiding auspices, and subject him, on his arrival, to a less conspicuous point of view than he ought on all occasions to stand in. Against this difficulty must be weighed the consideration above mentioned, to which may be added the opportunity which Pennsylvania, by the appointment of Doctor Franklin, has afforded of putting sufficient dignity into the Chair.

The effect of the interposition of Congress in favor of the treaty at this crisis, was foreseen by us. I would myself have preferred a little procrastination on the subject. But the manifest and undeniable propriety of the thing itself, with the chance that the Legislature here, which will adjourn in a little time until next winter, and which is one of the principal transgressors, may set an immediate example of reformation, overruled the argument for delay. The difficulties which, as you suggest, may be left behind by a mere repeal of all existing impediments, will be probably found of a very serious nature to British creditors. If no other advantage should be taken of them by the State, than the making the assent of the creditors to the plan of instalments, a condition of such further provisions as may not come within the treaty, I do not know that the existence of these difficulties ought to be matter of regret. In every view Congress seem to have taken the most proper course for maintaining the national character; and if any deviations in particular States should be required by peculiar circumstances, it will be

better that they should be chargeable on such States than on the United States.

The Maryland Assembly met on the second instant, being convened by proclamation. The expected delay, therefore, in her appointments for the Convention, cannot be admitted among the considerations which are to decide the time of your setting out. I am sorry that punctuality on your part will oblige you to travel without the company of Mrs. Randolph. But the sacrifice seems to be the more necessary, as Virginia ought not only to be on the ground in due time, but to be prepared with some materials for the work of the Convention. In this view, I could wish that you might be able to reach Philadelphia some days before the second Monday in May.

This city has been thrown into no small agitation by a motion, made a few days ago, for a short adjournment of Congress, and the appointment of Philadelphia as the place of its reassembling. No final question was taken, but some preliminary questions shewed that six States were in favor of it; Rhode Island, the seventh State, was at first in the affirmative, but one of its Delegates was overcome by the exertions made to convert him. As neither Maryland nor South Carolina was present, the vote is strong evidence of the precarious tenure by which New York enjoys her metropolitan advantages. The motives which led to this attempt were probably with some of a local nature. With others they were certainly of a general nature.

Mr. Jay was a few days ago instructed to communicate to Congress the State of the Spanish nego-

tion. An unwilling but silent assent was given by Massachusetts and Connecticut. The Report shews that Jay viewed the act of seven States as valid, and has even adjusted with Guardoqui an article for suspending our use of the Mississippi during the term of the treaty. A subsequent report, on a reference of Western information from Virginia and North Carolina, denotes little confidence in the event of the negotiation, and considerable perplexity as to the steps proper to be taken by Congress. Wednesday is fixed for the consideration of these reports. We mean to propose that Jefferson be sent, under a special commission, to plead the cause of the Mississippi at Madrid.¹⁴⁸

TO EDMUND RANDOLPH.

New York, April 22, 1787.

DEAR SIR,

I have the pleasure of yours of the eleventh instant, acknowledging mine of the second. In some of your letters I observe you do not say whether any have been received from me or not. I have not omitted to write, in a single instance, since our correspondence commenced.

The time approaches so nearly when I shall have an opportunity of making verbal communications on confidential points, that I forbear to commit them to paper.

Congress are deliberating on the plan most eligible for disposing of the Western territory not yet surveyed. Some alteration will probably be

made in the ordinance on that subject, in which the idea of townships will not be altogether abandoned, but rendered less expensive. An act passed yesterday providing for the sale of the surveyed lands, under the direction of the Treasury board. The price to be one dollar at the lowest; the sale is to be duly advertised in all the States, but the office is to be opened and held *where Congress shall sit*. The original plan of distributing the sale through all the States was certainly objectionable. To confine it to one place, and that so remote as New York is, both from the centre of the Union and the premises in question, cannot be less so.

The inhabitants of the Illinois complain of the land-jobbers, particularly Pentecost and Clarke, who are purchasing titles among them. Those of St. Vincent's complain of the defect of criminal and civil justice among them, as well as of military protection. These matters are before Congress, and are found to be infinitely embarrassing.

A copper coinage was agreed on yesterday to the amount of two hundred and odd thousand dollars. It is to be executed under a contract between the Treasury Board and the Coiner, and under the inspection of a person to be appointed on the part of the United States,—fifteen per cent. to be drawn from this operation into the Federal Treasury.

A great revolution is taking place in the administration in Massachusetts. Bowdoin is displaced in favour of Hancock. A great proportion of the Senate is already changed, and a greater is expected in the other branch of the Assembly. A paper emission there also is much feared by the friends of

justice. I find that the fetter originally put on the Deputies from that State to the Convention was taken off in consequence of the recommendatory act of Congress, and that the commission was adjusted to that act.

Connecticut has not yet been in Assembly, and, of course, has not decided on the Convention. I am told the changes which are taking place in her elections are far from strengthening the probability of her concurrence.¹⁴⁴

TO THOMAS JEFFERSON.

New York, April 23, 1787.

DEAR SIR,

Congress have agreed to Mr. Jay's report on the treaty of peace, and to an address which accompanies it. Copies of both will no doubt be sent you from his Department. The Legislature of this State, which was sitting at the time, and on whose account the acts of Congress were hurried through, has adjourned till January next, without deciding on them. This is an ominous example to the other States, and must weaken much the claim on Great Britain of an execution of the treaty on her part, as promised in case of proper steps being taken on ours. Virginia, we foresee, will be among the foremost in seizing pretexts for evading the injunctions of Congress. South Carolina is not less infected with the same spirit. The present deliberations of Congress turn on, first, the sale of the Western lands; secondly, the government of the Western

settlements within the Federal domain ; thirdly, the final settlement of the accounts between the Union and its members ; fourthly, the treaty with Spain.

1. Between six and seven hundred thousand acres have been surveyed in townships, under the land ordinance, and are to be sold forthwith. The place where Congress sit is fixed for the sale. Its eccentricity, and remoteness from the premises, will, I apprehend, give disgust. On the most eligible plan of selling the unsurveyed residue, Congress are much divided ; the Eastern States being strongly attached to that of townships, notwithstanding the expense incident to it ; the Southern being equally biassed in favor of indiscriminate locations, notwithstanding the many objections against that mode. The dispute will probably terminate in some kind of compromise, if one can be hit upon.

2. The government of the settlements on the Illinois and Wabash is a subject very perplexing in itself, and rendered more so by our ignorance of many circumstances on which a right judgment depends. The inhabitants at those places claim protection against the savages, and some provision for both criminal and civil justice. It appears also that land-jobbers are among them, who are likely to multiply litigations among individuals, and, by collusive purchases of spurious titles, to defraud the United States.

3. The settlement of the public accounts has long been pursued in varied shapes, and with little prospect of success. The idea which has long been urged by some of us, seems now to be seriously embraced, of establishing a plenipotentiary tribunal for

the final adjustment of the mutual claims, on the great and simple principle of equity. An ordinance for this purpose has been reported by the Treasury Board, and has made some progress through Congress. It is likely to be much retarded by the thinness of Congress, as indeed is almost every other matter of importance.

4. The Spanish negotiation is in a very ticklish situation. You have been already apprized of the vote of seven States last fall for ceding the Mississippi for a term of years. From sundry circumstances it was inferred that Jay was proceeding under this usurped authority. A late instruction to him to lay the state of the negotiation before Congress has discovered that he has adjusted with Guardoqui an article for suspending the use of the Mississippi by the citizens of the United States. The report, however, leaves it somewhat doubtful how far the United States are committed by this step, and a subsequent report of the Secretary on the seizure of Spanish property in the Western country, and on information of discontents touching the occlusion of the Mississippi, shews that the probable consequences of the measure perplex him extremely. It was nevertheless conceived by the instructed delegations to be their duty to press a revocation of the step taken, in some form which would least offend Spain, and least irritate the patrons of the vote of seven States. Accordingly a motion was made to the following effect—that the present state of the negotiation with Spain, and of the affairs of the United States, rendered it expedient that you should proceed, under a special com-

mission, to Madrid, for the purpose of making such representations as might at once impress on that Court our friendly disposition and induce it to relax on the contested points; and that the proper communications and explanations should be made to Guardoqui relative to this change in the mode of conducting the negotiation. This motion was referred to Mr. Jay, whose report disapproves of it. In this state the matter lies. Eight States only being present, no effective vote is to be expected. It may, notwithstanding, be incumbent on us to try some question which will at least mark the paucity of States who abet the obnoxious project. Massachusetts and New York alone, of the present States, are under that description; and Connecticut and New Hampshire alone of the absent. Maryland and South Carolina have hitherto been on the right side. Their future conduct is somewhat problematical. The opinion of New Hampshire is only conjectured. The conversion of Rhode Island countenances a hope that she too may, in this instance, desert the New England standard.

The prospect of a full and respectable Convention grows stronger every day. Rhode Island alone has refused to send Deputies. Maryland has probably appointed by this time. Of Connecticut alone doubts are entertained. The anti-federal party in that State is numerous and persevering. It is said that the elections which are now going on are rather discouraging to the advocates of the Convention. Pennsylvania has added Dr. Franklin to her deputation. There is some ground to calculate on the attendance of General Washington. Our Governor,

Mr. Wythe, Mr. Blair, and Col. Mason will pretty certainly attend. The last, I am informed, is renouncing his errors on the subject of the Confederation, and means to take an active part in the amendment of it. Mr. Henry pretty soon resigned the undertaking. General Nelson was put into his place, who has also declined. He was succeeded by Mr. R. H. Lee, who followed his example. Doctor M'Clurg has been since appointed, and as he was on the spot must have been previously consulted.¹⁴⁵

TO GENERAL WASHINGTON.

New York, September 30, 1787.

DEAR SIR,

I found, on my arrival here, that certain ideas, unfavorable to the act of the Convention which had created difficulties in that body, had made their way into Congress. They were patronized chiefly by Mr. R. H. Lee, and Mr. Dane, of Massachusetts. It was first urged, that, as the new Constitution was more than an alteration of the Articles of Confederation, under which Congress acted, and even subverted those Articles altogether, there was a constitutional impropriety in their taking any positive agency in the work. The answer given was, that the Resolution of Congress in February had recommended the Convention as the best means of obtaining a firm *National Government*; that, as the powers of the Convention were defined, by their commissions, in nearly the same terms with the

powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new plan, than the Convention were from proposing it. If the plan was within the powers of the Convention, it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to concur in what was done would imply, either that the Convention had done wrong in exceeding their powers, or that the government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new Western Governments, exercised assumed powers of a very high and delicate nature, under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, echoed by twelve States in the Union, and confirmed by the general voice of the people. An attempt was made in the next place by R. H. L., to amend the act of the Convention before it should go forth from Congress. He proposed a Bill of Rights, provision for juries in civil cases, and several other things corresponding with the ideas of Colonel Mason. He was supported by Mr. Melancthon Smith of this state. It was contended, that Congress had an undoubted right to insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty

had been omitted. On the other side, the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds;—first, that every circumstance indicated that the introduction of Congress as a party to the reform was intended by the States merely as a matter of form and respect; secondly, that it was evident, from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries; thirdly, that it was clearly the intention of the States that the plan to be proposed should be the act of the Convention, with the assent of Congress, which could not be the case, if alterations were made, the Convention being no longer in existence to adopt them; fourthly, that as the act of the Convention, when altered, would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the Legislatures, not Conventions of the States, and require the ratification of thirteen instead of nine States, and as the unaltered act would go forth to the States directly from the Convention under the auspices of that body, some States might ratify the one and some the other of the plans, and confusion and disappointment be the least evils that would ensue. These difficulties, which at one time threatened a serious division in Congress, and popular alterations, with the Yeas and Nays on the Journals, were at length fortunately terminated by the following Resolution: “Congress having received the Report of the Convention

lately assembled in Philadelphia, Resolved *unanimously* that the said Report, with the Resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a Convention of Delegates chosen in each State by the people thereof, in conformity to the Resolves of the Convention made and provided in that case." Eleven States were present, the absent ones, Rhode Island and Maryland. A more direct approbation would have been of advantage in this and some other States, where stress will be laid on the agency of Congress in the matter, and a handle be taken by adversaries of any ambiguity on the subject. With regard to Virginia and some other States, reserve on the part of Congress will do no injury. The circumstance of unanimity must be favorable every where.

The general voice of this City seems to espouse the new Constitution. It is supposed nevertheless that the party in power is strongly opposed to it. The country must finally decide, the sense of which is as yet wholly unknown. As far as Boston and Connecticut have been heard from, the first impression seems to be auspicious. I am waiting with anxiety for the echo from Virginia, but with very faint hopes of its corresponding with my wishes.

P. S. A small packet of the size of two volumes octavo addressed to you lately came to my hands with books of my own from France. General Pinkney has been so good as to take charge of them. He set out yesterday for South Carolina, and means to call at Mount Vernon.¹⁴⁶

TO EDMUND RANDOLPH.

New York, October 7, 1787.

DEAR SIR,

Congress are at present deliberating on the requisition. The Treasury Board has reported one in specie alone, alleging the mischiefs produced by "Indents." It is proposed by a Committee that indents be received from the States, but that the conditions tying down the States to a particular mode of procuring them, be abolished; and that the indents for one year be receivable in the quotas of any year.

St. Clair is appointed Governor of the Western country, and Major Sarjent, of Massachusetts, the Secretary of that establishment. A treaty with the Indians is on the anvil, as a supplemental provision for the Western country. It is not certain, however, that any thing will be done, as it involves money, and we shall have on the floor nine States one more day only.

We hear nothing decisive as yet concerning the general reception given to the act of the Convention. The advocates for it come forward more promptly than the adversaries. The sea coast seems every where fond of it. The party in Boston which was thought most likely to make opposition, are warm in espousing it. It is said that Mr. S. Adams objects to one point only, viz. the prohibition of a religious test. Mr. Bowdoin's objections are said to be against the great number of members composing the Legislature, and the intricate election of the President. You will no doubt have

heard of the fermentation in the Assembly of Pennsylvania.¹⁷

Mr. Adams is permitted to return home after February next, with thanks for the zeal and fidelity of his services. As the commission of Smith expires at that time, and no provision is made for continuing him, or appointing a successor, the representation of the United States at the Court of London will cease at that period.

TO EDMUND RANDOLPH.

New York, October 21, 1787.

DEAR SIR,

We hear that opinions are various in Virginia on the plan of the Convention. I have received, within a few days, a letter from the Chancellor, by which I find that he gives it his approbation; and another from the President of William and Mary, which, though it does not absolutely reject the Constitution, criticises it pretty freely. The newspapers in the Northern and Middle States begin to teem with controversial publications. The attacks seem to be principally levelled against the organization of the Government, and the omission of the provisions contended for in favor of the press, and juries, &c. A new combatant, however, with considerable address and plausibility, strikes at the foundation. He represents the situation of the United States to be such as to render any government improper and impracticable which forms the States into one nation, and is to operate directly on the people. Judging from

the newspapers, one would suppose that the adversaries were the most numerous and the most earnest. But there is no other evidence that it is the fact. On the contrary, we learn that the Assembly of New Hampshire, which received the Constitution on the point of their adjournment, were extremely pleased with it. All the information from Massachusetts denotes a favorable impression there. The Legislature of Connecticut have unanimously recommended the choice of a Convention in that State, and Mr. Baldwin, who is just from the spot, informs me, that, from present appearances, the opposition will be inconsiderable; that the Assembly, if it depended on them, would adopt the system almost unanimously; and that the clergy and all the literary men are exerting themselves in its favor. Rhode Island is divided; the majority being violently against it. The temper of this State cannot yet be fully discerned. A strong party is in favor of it. But they will probably be outnumbered, if those whose numbers are not yet known should take the opposite side. New Jersey appears to be zealous. Meetings of the people in different counties are declaring their approbation, and instructing their representatives. There will probably be a strong opposition in Pennsylvania. The other side, however, continue to be sanguine. Doctor Carroll, who came hither lately from Maryland, tells me, that the public voice there appears at present to be decidedly in favor of the Constitution. Notwithstanding all these circumstances, I am far from considering the public mind as fully known, or finally settled on the subject. They amount only to a strong presump-

tion that the general sentiment in the Eastern and Middle States is friendly to the proposed system at this time.

TO THOMAS JEFFERSON.

New York, October 24, 1787.

DEAR SIR,

When the plan of the Constitution proposed by the Convention came before Congress for their sanction, a very serious effort was made by R. H. Lee and Mr. Dane, from Massachusetts, to embarrass it. It was first contended, that Congress could not properly give any positive countenance to a measure which had for its object the subversion of the Constitution under which they acted. This ground of attack failing, the former gentleman urged the expediency of sending out the plan with amendments, and proposed a number of them corresponding with the objections of Col. Māson. This experiment had still less effect. In order, however, to obtain unanimity, it was necessary to couch the resolution in very moderate terms.

Mr. Adams has received permission to return, with thanks for his services. No provision is made for supplying his place, or keeping up any representation there. Your reappointment for three years will be notified from the office of foreign affairs. It was made without a negative, eight States being present. Connecticut, notwithstanding, put in a blank ticket, the sense of that State having been declared against embassies. Massa-

chusetts betrayed some scruple on like ground. Every personal consideration was avowed, and I believe with sincerity, to have militated against these scruples. It seems to be understood that letters to and from the foreign ministers of the United States are not free of postage; but that the charge is to be allowed in their accounts.

The exchange of our French for Dutch creditors has not been countenanced either by Congress or the Treasury Board. The paragraph in your last letter to Mr. Jay, on the subject of applying a loan in Holland to the discharge of the pay due to the foreign officers, has been referred to the Board since my arrival here. No report has yet been made. But I have little idea that the proposition will be adopted. Such is the state and prospect of our fiscal department, that any new loan, however small, that should now be made, would probably subject us to the reproach of premeditated deception. The balance of Mr. Adams's last loan will be wanted for the interest due in Holland, and, with all the income here, will, it is feared, not save our credit in Europe from farther wounds. It may well be doubted whether the present Government can be kept alive during the ensuing year, or until the new one may take its place.

Upwards of one hundred thousand acres of the lands of the United States have been disposed of in open market. Five millions of unsurveyed have been sold by private contract to a New England company, at two-thirds of a dollar per acre, payment to be made in the principal of the public securities. A negotiation is nearly closed with a New

Jersey company for two millions more on like terms, and another commenced with a company of this city for four millions.¹⁴

TO GENERAL WASHINGTON.

New York, Oct. 28, 1787.

DEAR SIR,

The mail of yesterday brought me your favor of the twenty-second instant. The communications from Richmond give me as much pleasure as they exceed my expectations. As I find by a letter from a member of the Assembly, however, that Col. Mason has not got down, and it appears that Mr. Henry is not at bottom a friend, I am not without fears that the combined influence and management may yet create difficulties. There is one consideration which I think ought to have some weight in the case, over and above the intrinsic inducements to embrace the Constitution, and which I have suggested to some of my correspondents. There is at present a very strong probability that nine States at least will pretty speedily concur in establishing it, What will become of the tardy remainder? They must be either left, as outcasts from the society, to shift for themselves, or be compelled to come in, or must come in of themselves when they will be allowed no credit for it. Can either of these situations be as eligible as a prompt and manly determination to support the Union, and share its common fortunes?

My last stated pretty fully the information which had arrived here from different quarters, concerning

the proposed Constitution. I recollect nothing that is now to be added, farther than that the Assembly of Massachusetts, now sitting, certainly gives it a friendly reception. I enclose a Boston paper, by which it appears that Governor Hancock has ushered it to them in as propitious a manner as could have been required.

Mr. Charles Pinckney's character is, as you observe, well marked by the publications which I enclosed. His printing the secret paper at this time could have no motive but the appetite for expected praise; for the subject to which it relates has been dormant a considerable time, and seems likely to remain so.

A foreign gentleman of merit, and who, besides this general title, brings me a letter which gives him a particular claim to my civilities, is very anxious to obtain a sketch of the Potomac and the route from the highest navigable part of it to the western waters which are to be connected with the Potomac by the portage, together with a sketch of the works going on, and a memorandum of the progress made in them. Knowing of no other channel through which I could enable myself to gratify this gentleman, I am seduced into the liberty of resorting to your kindness; and of requesting, that, if you have such a draught by you, your amanuensis may be permitted to take a *very rough copy* of it for me. In making this request I beseech you, Sir, to understand that I do it with not more confidence in your goodness than with the sincerest desire that it may be disregarded if it cannot be fulfilled with the most perfect convenience.¹⁴⁹

TO EDMUND RANDOLPH.

New York, November 18, 1787.

DEAR SIR,

I have not since my arrival collected any additional information concerning the progress of the Federal Constitution. I discovered no evidence on my journey through New Jersey, that any opposition whatever would be made in that State. The Convention of Pennsylvania is to meet on Tuesday next. The members returned, I was told by several persons, reduced the adoption of the plan in that State to absolute certainty, and by a greater majority than the most sanguine advocates had calculated. One of the counties which had been set down by all on the list of opposition, had elected deputies of known attachment to the Constitution.

I do not find that a single State is represented except Virginia, and it seems very uncertain when a Congress will be made. There are individual members present from several States; and the attendance of this and the neighbouring States may, I suppose, be obtained when it will produce a quorum.

TO EDMUND RANDOLPH.

New York, December 2, 1787.

DEAR SIR,

Our public letter gave you the latest authentic information from Europe. A general war seems not impossible; a war between the Russians and the Turks has actually commenced. The enterprising

movements of the Prussian troops have disconcerted the patriotic party and their supporters, and it seems as if the Stadtholder would gain a complete triumph. What effect this may have on the Government of that country, I cannot undertake to foretell. I have never been inclined to think that complete success to the views of either party would be favorable to the people. If the Stadtholdership were abolished, the government, unless further changes occurred, would be a simple aristocracy. Should the patriots, as they call themselves, be excluded from the government, the Stadtholder would be an absolute monarch. Whilst both continue, they check each other; which is absolutely necessary, as the people have no check on either. The consequence of the people arises from the competitions of the two for their favor. In general the lower orders have been partizans of the Stadtholder. They are so, it is said, in the present contest.

We have not more than two or three States as yet attending. It is altogether conjectural when the deficiency of a quorum will be made up.

No recent indications of the views of the States as to the Constitution have come to my knowledge. The elections in Connecticut are over, and, as far as the returns are known, a large majority are friendly to it. Doctor Johnson says, it will be pretty certainly adopted; but there will be opposition. The power of taxing any thing but imports appears to be the most popular topic among the adversaries. The Convention of Pennsylvania is sitting. The result there will not reach you first through my hands. The divisions on preparatory questions, as

they are published in the newspapers, shew that the party in favor of the Constitution have forty-four or forty-five *vs.* twenty-two or twenty-four, or thereabouts.

The enclosed paper contains two numbers of the *Federalist*. This paper was begun about three weeks ago, and proposes to go through the subject. I have not been able to collect all the numbers, since my return from Philadelphia, or I would have sent them to you. I have been the less anxious, as I understand the printer means to make a pamphlet of them, when I can give them to you in a more convenient form. You will probably discover marks of different pens. I am not at liberty to give you any other key than that I am in myself for a few numbers, and that one besides myself was a member of the Convention.¹³⁰

TO THOMAS JEFFERSON.

New York, December 30, 1787.

DEAR SIR,

Mr. De la Forest, the Consul here, called on me a few days ago, and told me he had information, that the Farmers General and Mr. Morris, having found their contract mutually advantageous, are evading the resolutions of the Committee by tacit arrangements for its continuance. He observed, that the object of the Farmers was singly profit, that of the Government two fold, revenue and commerce. It was consequently the wish of the latter to render the monopoly as little hurtful to the trade with

America as possible. He suggested as an expedient, that the Farmers should be required to divide the contracts among six or seven houses, French and American, who should be required to ship annually to America a reasonable proportion of goods. This, he supposed, would produce some competition in the purchases here, and would introduce a competition also with British goods here. The latter condition, he said, could not be well required of, or executed by, a single contractor, and the Government could not abolish the farm. These ideas were meant for you.

Since the date of my other letter, the Convention of Delaware have unanimously adopted the new Constitution. That of Pennsylvania has adopted it by a majority of 46 against 23. That of New Jersey is sitting and will adopt pretty unanimously. These are all the Conventions that have met. I hear from North Carolina that the Assembly there is well disposed. Mr. Henry, Mr. Mason, R. H. Lee, and the Governor, continue by their influence to strengthen the opposition in Virginia. The Assembly there is engaged in several mad freaks. Among others a bill has been agreed to in the House of Delegates, *prohibiting* the importation of rum, *brandy*, and all other spirits not distilled from some American production. All brewed liquors under the same description, with beef, tallow candles, cheese, &c., are included in the prohibition. In order to enforce this despotic measure, the most despotic means are resorted to. If any person be found, after the commencement of the act, in the use or *possession* of any of the prohibited articles, though acquired previously

to the law, he is to lose them, and pay a heavy fine. This is the form in which the bill was agreed to by a large majority in the House of Delegates. It is a child of Mr. Henry, and said to be a favorite one. They first voted, by *a majority of thirty*, that all legal obstructions to the treaty of peace, should cease in Virginia as soon as laws complying with it should have passed in all the other States. This was the result of four days' debate, with the most violent opposition from Mr. Henry. A few days afterward he renewed his efforts, and got a vote, *by a majority of fifty*, that Virginia would not comply until Great Britain shall have complied.

The States seem to be either wholly omitting to provide for the Federal Treasury; or to be withdrawing the scanty appropriations made to it. The latter course has been taken by Massachusetts, Virginia, and Delaware. The Treasury Board seems to be in despair of maintaining the shadow of government much longer. Without money, the offices must be shut up, and the handful of troops on the frontier disbanded, which will probably bring on an Indian war, and make an impression to our disadvantage on the British garrisons within our limits.¹⁵¹

TO GENERAL WASHINGTON.

New York, December 30, 1787.

DEAR SIR,

I was favored on Saturday with your letter of the seventh instant, along with which was covered the printed letter of Colonel R. H. Lee to the Governor.

It does not appear to me to be a very formidable attack on the new Constitution; unless it should derive an influence from the names of the correspondents, which its intrinsic merits do not entitle it to. He is certainly not perfectly accurate in the statement of all his facts; and I should infer from the tenor of the objections in Virginia that his plan of an Executive would hardly be viewed as an amendment of that of the Convention. It is a little singular that three of the most distinguished advocates for amendments; and who expect to unite the thirteen States in their project, appear to be pointedly at variance with each other on one of the capital articles of the system. Colonel Lee proposes, that the President should choose a Council of eleven, and with their advice have the appointment of all officers. Colonel Mason's proposition is, that a Council of six should be appointed by the Congress. What degree of power he would confide to it, I do not know. The idea of the Governor is, that there should be a plurality of co-equal heads, distinguished probably by other peculiarities in the organization. It is pretty certain that some others who make a common cause with them in the general attempt to bring about alterations, differ still more from them than they do from each other; and that they themselves differ as much on some other great points, as on the constitution of the Executive.

You did not judge amiss of Mr. Jay. The paragraph affirming a change in his opinion of the plan of the Convention, was an arrant forgery. He has contradicted it in a letter to Mr. J. Vaughan which has been printed in the Philadelphia gazettes.

Tricks of this sort are not uncommon with the enemies of the new Constitution. Colonel Mason's objections were, as I am told, published in Boston, mutilated of that which pointed at the regulation of commerce. Doctor Franklin's concluding speech, which you will meet with in one of the papers herewith enclosed, is both mutilated and adulterated, so as to change both the form and spirit of it.

I am extremely obliged by the notice you take of my request concerning the Potomac. I must insist that you will not consider it as an object of any further attention.

The Philadelphia papers will have informed you of the result of the Convention of that State. New Jersey is now in Convention, and has probably by this time adopted the Constitution. General Irvine, of the Pennsylvania Delegation, who is just arrived here, and who conversed with some of the members at Trenton, tells me that great unanimity reigns in the Convention.

Connecticut, it is pretty certain, will decide also in the affirmative by a large majority. So, it is presumed, will New Hampshire; though her Convention will be a little later than could be wished. There are not enough of the returns in Massachusetts known for a final judgment of the probable event in that State. As far as the returns are known, they are extremely favorable: but as they are chiefly from the maritime parts of the State, they are a precarious index of the public sentiment. I have good reason to believe that if you are in correspondence with any gentleman in that quarter, and a proper occasion should offer for an explicit com-

munication of your good wishes for the plan, so as barely to warrant an explicit assertion of the fact, that it would be attended with valuable effects. I barely drop the idea. The circumstances on which the propriety of it depends are best known to you, as they will be best judged of by yourself. The information from North Carolina gave me great pleasure. We have nothing from the States south of it.¹²⁸

TO EDMUND RANDOLPH.

New York, January 10, 1788.

DEAR SIR,

I received two days ago your favor of December twenty seventh, enclosing a copy of your letter to the Assembly. I have read it with attention, and I can add with pleasure, because the spirit of it does as much honor to your candor, as the general reasoning does to your abilities. Nor can I believe that in this quarter the opponents of the Constitution will find encouragement in it. You are already aware that your objections are not viewed in the same decisive light by me that they are by you. I must own that I differ still more from your opinion, that a prosecution of the experiment of a second Convention will be favorable, even in Virginia, to the object which I am sure you have at heart. It is to me apparent that, had your duty led you to throw your influence into the opposite scale, it would have given it a decided and unalterable preponderance; and that Mr. Henry would either have suppressed

his enmity, or been baffled in the policy which it has dictated. It appears also that the grounds taken by the opponents in different quarters forbid any hope of concord among them. Nothing can be further from your views than the principles of different sets of men who have carried on their opposition under the respectability of your name. In this State the party adverse to the Constitution notoriously meditate either a dissolution of the Union, or protracting it by patching up the Articles of Confederation. In Connecticut and Massachusetts, the opposition proceeds from that part of the people who have a repugnance in general to good government, or to any substantial abridgement of State powers, and a part of whom in Massachusetts are known to aim at confusion, and are suspected of wishing a reversal of the Revolution. The minority in Pennsylvania, as far as they are governed by any other views than an habitual opposition to their rivals, are manifestly averse to some essential ingredients in a National Government. You are better acquainted with Mr. Henry's politics than I can be, but I have for some time considered him as no further concurring in the plan of amendments than as he hopes to render it subservient to his real designs. Viewing the matter in this light, the inference with me is unavoidable that were a second trial to be made, the friends of a good constitution for the Union would not only find themselves not a little differing from each other as to the proper amendments; but perplexed and frustrated by men who had objects totally different. A second Convention would, of course, be formed under the

influence, and composed in a great measure of the members of the opposition in the several States. But were the first difficulties overcome, and the Constitution re-edited with amendments, the event would still be infinitely precarious. Whatever respect may be due to the rights of private judgment, and no man feels more of it than I do, there can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal, and on which they must and will be governed by those with whom they happen to have acquaintance and confidence. The proposed Constitution is of this description. The great body of those who are both for and against it must follow the judgment of others, not their own. Had the Constitution been framed and recommended by an obscure individual, instead of a body possessing public respect and confidence, there cannot be a doubt, that although it would have stood in the identical words, it would have commanded little attention from most of those who now admire its wisdom. Had yourself, Colonel Mason, Colonel R. H. Lee, Mr. Henry, and a few others, seen the Constitution in the same light with those who subscribed it, I have no doubt that Virginia would have been as zealous and unanimous, as she is now divided, on the subject. I infer from these considerations, that, if a government be ever adopted in America, it must result from a fortunate coincidence of leading opinions, and a general confidence of the people in those who may recommend it. The very attempt at a second Convention strikes at the confidence in the first; and the existence of a second, by opposing influence to influ-

ence would in a manner destroy an effectual confidence in either, and give a loose rein to human opinions; which must be as various and irreconcilable concerning theories of government, as doctrines of religion; and give opportunities to designing men which it might be impossible to counteract.

The Connecticut Convention has probably come to a decision before this; but the event is not known here. It is understood that a great majority will adopt the Constitution. The accounts from Massachusetts vary extremely according to the channels through which they come. *It is said* that S. Adams, who has hitherto been reserved, begins to make open declaration of his hostile views. His influence is not great, but this step argues an opinion that he can calculate on a considerable party. It is said here, and I believe on good ground, that North Carolina has postponed her Convention till July, in order to have the previous example of Virginia. Should North Carolina fall into Mr. Henry's politics, which does not appear to me improbable, it will endanger the Union more than any other circumstance that could happen. My apprehensions of this danger increase every day. The multiplied inducements at this moment to the local sacrifices necessary to keep the States together, can never be expected to coincide again, and they are counteracted by so many unpropitious circumstances, that their efficacy can with difficulty be confided in. I have no information from South Carolina or Georgia, on which any certain opinion can be formed of the temper of those States. The prevailing idea has been, that both of them would speedily and

generally embrace the Constitution. It is impossible, however, that the example of Virginia and North Carolina should not have an influence on their politics. I consider every thing therefore problematical from Maryland southward.

We have no Congress yet. The number of States on the spot does not exceed five. It is probable that a quorum will now be soon made. A delegate from New Hampshire is expected, which will make up a representation from that State. The termination of the Connecticut Convention will set her Delegates at liberty, and the meeting of the Assembly of this State, will fill the vacancy which has some time existed in her Delegation.¹²⁸

TO EDMUND RANDOLPH.

New York, January 20, 1788.

DEAR SIR,

The Count de Moustier arrived a few days ago as successor to the Chevalier de la Luzerne. He had so long a passage that I do not know whether the dispatches brought by him contain much that is new. It seems that, although the affairs of Holland are put into a pacific train, those of the Russians and Turks may yet produce a general broil in Europe. The Prussian troops are to be withdrawn, and the fate of the Dutch regulated by negotiation.

The intelligence from Massachusetts begins to be rather ominous to the Constitution. The interest

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opposed to it is reinforced by all connected with the late insurrection; and by the province of Maine which apprehends difficulties, under the new system, in obtaining a separate Government, greater than may be otherwise experienced. Judging from the present state of the intelligence, as I have it, the probability is, that the voice of the State will be in the negative. The Legislature of this State is much divided at present. The House of Assembly are said to be friendly to the merits of the Constitution. The Senate, at least a majority of those actually assembled, are opposed even to the calling a Convention. The decision of Massachusetts, in either way, will decide the voice of this State. The minority of Pennsylvania are extremely restless under their defeat; will endeavour at all events, if they can get an Assembly to their wish, to undermine what has been done there; and will, it is presumed, be emboldened by a negative from Massachusetts to give a more direct and violent form to their attack. So they are also from South Carolina, as far as they extend.

If I am not misinformed as to the arrival of some members of Congress in town, a quorum is at length made up.

TO EDMUND RANDOLPH.

New York, January 27, 1788.

DEAR SIR,

A Congress was made for the first time on Monday last, and our friend C. Griffin placed in the

Chair. There was no competition in the case, which you will wonder at, as Virginia has so lately supplied a President. New Jersey did not like it, I believe, very well, but acquiesced.

I postponed writing by the last mail, in hopes of being able by this to acquaint you with the probable result of the Convention of Massachusetts. It appears, however, that the prospect continues too equivocal to justify a conjecture on the subject. The representations vary somewhat, but they all tend to excite, rather than diminish, anxiety. Mr. Gerry had been introduced to a seat for the purpose of stating facts. On the arrival of the discussion at the Article concerning the Senate, he signified, without being called on, that he had important information to communicate on that subject. Mr. Dana and several others remarked on the impropriety of Mr. Gerry's conduct. Gerry rose to justify. Others opposed it as irregular. A warm conversation arose, and continued till the adjournment; after which a still warmer one took place between Gerry and Dana. The members gathered around them, took sides as they were for or against the Constitution, and strong symptoms of confusion appeared. At length, however, they separated. It was expected that the subject would be renewed in the Convention the next morning. This was the state of things when the post came off.

In one of the papers enclosed you will find your letter to the Assembly reviewed by some critic of this place. I can form no guess who he is. I have seen another attack grounded on a comparative view of your objections, Col. Mason's, and Mr. Ger-

ry's. This was from Philadelphia. I have not the paper, or I would add it.¹⁵⁴

TO GENERAL WASHINGTON.

New York, February 3, 1788.

DEAR SIR,

Another mail has arrived from Boston without terminating the conflict between our hopes and fears. I have a letter from Mr. King, of the twenty-seventh, which, after dilating somewhat on the ideas in his former letters, concludes with the following paragraph: "We have avoided every question which would have shewn the division of the House. Of consequence we are not positive of the numbers on each side. By the last calculation we made on our side, we were doubtful whether we exceeded them, or they us, in numbers. They, however, say that they have a majority of eight or twelve against us. We by no means despair." Another letter of the same date, from another member, gives the following picture: "Never was there an Assembly in this State in possession of greater ability and information than the present Convention; yet I am in doubt whether they will approve the Constitution. There are unhappily three parties opposed to it—first, all men who are in favor of paper-money and tender laws,—these are more or less in every part of the State; secondly, all the late insurgents and their abettors,—in the three great western counties they

are very numerous; we have in the Convention eighteen or twenty who were actually in Shays' army;—thirdly, a great majority of the members from the province of Maine. Many of them and their constituents are only squatters on other people's land, and they are afraid of being brought to account; they also think, though erroneously, that their favorite plan, of being a separate State, will be defeated. Add to these the honest doubting people, and they make a powerful host. The leaders of this party are—Mr. Widgery, Mr. Thomson, and Mr. Nasson, from the province of Maine; Doctor Taylor, from the county of Worcester, and Mr. Bishop, from the neighbourhood of Rhode Island. To manage the cause against them, are the present and late Governors, three Judges of the Supreme Court, fifteen members of the Senate, twenty from among the most respectable of the clergy, ten or twelve of the first characters at the bar, Judges of probate, High sheriffs of counties, and many other respectable people, merchants, &c., Generals Heath, Lincoln, Brooks, and others of the late army. With all this ability in support of the cause, I am pretty well satisfied we shall lose the question, unless we can take off some of the Opposition by amendments. I do not mean such as are to be made conditions of the ratification, but recommendations only. Upon this plan I flatter myself we may possibly get a majority of twelve or fifteen, if not more."

The Legislature of this State has voted a Convention on the seventeenth of June.¹⁸⁵

TO EDMUND RANDOLPH.

New York, March 3, 1788.

DEAR SIR,

The Convention of New Hampshire have disappointed the general expectation. They have not rejected the Constitution, but they have adjourned without adopting it. It was found that, on a final question, there would be a majority of three or four in the negative; but in this number were included some who, with instructions from their towns against the Constitution, had been proselyted by the discussions. These concurring with the Federalists in the adjournment, carried it by fifty-seven against forty-seven, if I am rightly informed as to the numbers. The second meeting is not to be till the last week in June. I have inquired of the gentlemen from that quarter, what particularly recommended so late a day, supposing it might refer to the times fixed by New York and Virginia. They tell me it was governed by the intermediate annual elections and courts. If the Opposition in that State be such as they are described, it is not probable that they pursue any sort of plan, more than that of Massachusetts. This event, whatever cause may have produced it, or whatever consequences it may have in New Hampshire, is no small check to the progress of the business. The Opposition here, which are unquestionably hostile to every thing beyond the *federal* principle, will take new spirits. The event in Massachusetts had almost extinguished their hopes. That in Pennsylvania will probably be equally encouraged.¹⁵⁸

TO EDMUND RANDOLPH.

New York, July 2, 1788.

DEAR SIR,

There are public letters just arrived from Jefferson. The contents are not yet known. His private letters to me and others refer to his public for political news. *I find that he is becoming more and more a friend to the new Constitution, his objections being gradually dispelled by his own further reflections on the subject. He particularly renounces his opinion concerning the expediency of a ratification by nine, and a repeal by four, States, considering the mode pursued by Massachusetts as the only rational one, but disapproving some of the alterations recommended by that State.* He will see still more room for disapprobation in the recommendation of other States. The defects of the Constitution which he continues to criticise are, the omission of a Bill of Rights, and of the principle of rotation, at least in the Executive department.

Congress have been some days on the question where the first meeting of the new Congress shall be placed. Philadelphia failed by a single vote from Delaware, which ultimately aimed at that place, but wished to bring Wilmington into view. In that vote New Hampshire and Connecticut both concurred. New York is now in nomination, and if those States accede which I think probable, and Rhode Island which has yet refused to sit in the question can be prevailed on to vote, which I also think probable, the point will be carried. In this

event a great handle, I fear, will be given to those who have opposed the new Government on account of the Eastern preponderance in the Federal system.¹⁸⁷

TO EDMUND RANDOLPH.

New York, July 16, 1788.

DEAR SIR,

The enclosed papers will give you the latest intelligence from Poughkeepsie. It seems by no means certain what the result there will be. Some of the most sanguine calculate on a ratification. The best informed apprehend some clog that will amount to a condition. The question is made peculiarly interesting in this place, by its connexion with the question relative to the place to be recommended for the meeting of the first Congress under the new Government.

Thirteen States are at present represented. A plan for setting this new machine in motion has been reported some days, but will not be hurried to a conclusion. Having been but a little time here, I am not yet fully in the politics of Congress.

TO EDMUND RANDOLPH.

New York, July 22, 1788.

DEAR SIR,

The enclosed papers will give you a view of the business in the Convention at Poughkeepsie. It is

not as yet certain that the ratification will take any final shape than can make New York immediately a member of the new Union. The opponents cannot come to that point without yielding a complete victory to the Federalists, which must be a severe sacrifice of their pride. It is supposed too, that *some* of them would not be displeased at seeing a bar to the pretensions of this city to the first meeting of the new Government. On the other side, the zeal for an unconditional ratification is not a little increased by contrary wishes.

TO EDMUND RANDOLPH.

New York August 11, 1788.

DEAR SIR,

The length of the interval since my last has proceeded from a daily expectation of being able to communicate the arrangements for introducing the new Government. The times necessary to be fixed by Congress have been many days agreed on. The place of meeting, has undergone many vicissitudes, and is still as uncertain as ever. Philadelphia was first named by a member from Connecticut, and was negatived by the voice of one from Delaware, who wished to make an experiment for Wilmington. New York came next into view. Lancaster was opposed to it, and failed. Baltimore was next tried, and, to the surprize of every one, had seven votes, South Carolina joining the Southern States and Pennsylvania in the question. It was not difficult

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to foresee that such a vote could not stand. Accordingly the next day, New York carried it on a second trial and at present fills the blank. Its success, however, was owing to Rhode Island, whose Delegates have refused to vote on the final question, and have actually gone home. There are not at present seven States for any place, and the result must depend (unless Rhode Island should return with instructions, as is *given out*) on the comparative flexibility of the Northern and Southern delegations.

TO EDMUND RANDOLPH.

New York, August 22, 1788.

DEAR SIR,

I have your favor of the thirteenth. The effect of Clinton's circular letter in Virginia does not surprise me. It is a signal of concord and hope to the enemies of the Constitution every where, and will, I fear, prove extremely dangerous. Notwithstanding your own remarks on the subject, I cannot but think that an *early* Convention will be an unadvised measure. It will evidently be the offspring of party and passion, and will probably for that reason alone be the parent of error and public injury. It is pretty clear that a majority of the people of the Union are in favor of the Constitution as it stands, or at least are not dissatisfied with it in that form; or if this be not the case, it is at least clear that a greater proportion unite in that system than are likely to unite in any other theory.

Should radical alterations take place, therefore, they will not result from the deliberate sense of the people, but will be obtained by management, or extorted by menaces, and will be a real sacrifice of the public will, as well as of the public good, to the views of individuals, and perhaps the ambition of State Legislatures.

Congress have come to no final decision as to the place for commencing the new Government.¹⁸⁸

TO EDMUND RANDOLPH.

New York, September 14, 1788.

DEAR SIR,

Your favor of the third instant would have been acknowledged two days ago, but for the approaching completion of the arrangement for the new Government, which I wished to give you the earliest notice of. This subject has long employed Congress, and has, in its progress, assumed a variety of shapes, some of them not a little perplexing. The times, as finally settled, are, January for the choice of Electors, February for the choice of a President, and March for the meeting of Congress. The place, the present seat of the Federal Government. The last point was carried by the yielding of the smaller, to the inflexibility of the greater, number. I have myself been ready for bringing it to this issue for some time, perceiving that further delay could only discredit Congress, and injure the object in view. Those who had opposed New York along with me could not overcome their repugnance so soon. Ma-

ryland went away before the question was decided, in a temper which, I believe, would never have yielded. Delaware was equally inflexible. Previously to our final assent, a motion was made which tendered a blank for any place the majority would choose between the North river and the Potomac. This being rejected, the alternative remaining was, to agree to New York, or to strangle the Government in its birth. The former as the lesser evil was of course preferred, and must now be made the best of.¹⁸⁰

TO EDMUND RANDOLPH.

New York, September 24, 1788.

DEAR SIR,

I have been favored with yours of the twelfth instant. The picture it gives of the state of our country is the more distressing as it seems to exceed all the known resources for immediate relief. Nothing, in my opinion, can give the desired facility to the discharge of debts, but a re-establishment of that confidence which will at once make the creditor more patient and open to the solvent debtor other means than bringing his property to market. How far the new Government will produce these effects, cannot yet be decided. But the utmost success that can be hoped from it will leave in full force the causes of intermediate embarrassment. The additional pressure apprehended from British debts, is an evil also for which I perceive at present no certain remedy. As far, however, as the favorable

influence of the new Government may extend, that may be one source of alleviation. It may be expected also that the British creditors will feel several motives to indulgence. And I will not suppress a hope that the new Government will be both able and willing to effect something by negotiation. Perhaps it might not be amiss for the Assembly to prepare the way by some act or other, for drawing the attention of the first session of the Congress to this subject. The possession of the posts by Great Britain, after the removal of the grounds of her complaint by the provision in the new Constitution with regard to the Treaty, will justify a renewal of our demands, and an interference in favor of American citizens on whom the performance of the Treaty on our side depends.

Congress have agreed to some resolutions in favor of the Mississippi which are well calculated to appease the discontents of our Western brethren. You shall soon have a copy of them. They are grounded on a remonstrance from North Carolina on that subject. By the way, how has it happened that the last resolutions of Virginia were never forwarded to the Delegation?

TO GENERAL WASHINGTON.

New York, September 26, 1788.

DEAR SIR,

I subjoin two resolutions lately taken by Congress in relation to the Mississippi, which I hope may

have a critical and salutary effect on the temper of our Western brethren.

IN CONGRESS, SEPTEMBER 16TH.

On report of the Committee, consisting of Mr. Hamilton, Mr. Madison, Mr. Williamson, Mr. Dane, and Mr. Edwards, to whom was referred the Report of the Secretary for Foreign Affairs on a motion of the Delegates of North Carolina stating the uneasiness produced by a report 'that Congress are disposed to treat with Spain for the surrender of their claim to the navigation of the river Mississippi,' and proposing a Resolution intended to remove such apprehensions,

Resolved, that the said report not being founded in fact, the Delegates be at liberty to communicate all such circumstances as may be necessary to contradict the same, and to remove misconceptions.

Resolved, that the free navigation of the river Mississippi, is a clear and essential right of the United States, and that the same ought to be considered and supported as such.

In addition to these resolutions, which are not of a secret nature, another has passed arresting all negotiations with Spain, and handing over the subject, thus freed from bias from any former proceedings, to the ensuing Government. This last resolution is entered on the Secret Journal, but a tacit permission is given to the members to make a *confidential* use of it.¹⁰⁰

TO EDMUND RANDOLPH.

New York, October 17, 1788.

DEAR SIR,

I have a letter from Mr. Jefferson, but it contains nothing of much consequence. His public letters to which it refers have not yet been communicated from the office of Foreign Affairs. Through other authentic channels I learn that the States General will pretty certainly be convened in May next. The efficacy of that cure for the public maladies will depend materially on the mode in which the deputies may be selected, which appears to be not yet settled. There is good reason also to presume, that, as the spirit which at present agitates the nation has been in a great measure caught from the American Revolution, so the result of the struggle there will be not a little affected by the character which liberty may receive from the experiment now on foot here. The tranquil and successful establishment of a great reform by the reason of the community, must give as much force to the doctrines urged on one side as a contrary event would do to the policy maintained on the other.

As Col. Carrington will be with you before this gets to hand, I leave it with him to detail all matters of a date previous to his departure. Of a subsequent date I recollect nothing worth adding. I requested him also to confer with you in full confidence on the appointments to the Senate and House of Representatives, so far as my friends may consider me in relation to either. He is fully possessed

of my real sentiments, and will explain them more conveniently than can be done on paper. I mean not to decline an agency in launching the new Government if such should be assigned me in one of the Houses, and I prefer the House of Representatives, chiefly because, if I can render any service there, it can only be to the public, and, not even in imputation, to myself. At the same time my preference, I own, is somewhat founded on the supposition that the arrangements for the popular elections may secure me against any competition which would require on my part any step that would speak a solicitude which I do not feel, or have the appearance of a spirit of electioneering which I despise.

TO EDMUND RANDOLPH.

New York, November 2, 1788.

DEAR SIR,

I received yesterday your favor of the twenty-third ultimo. The first countenance of the Assembly corresponds with the picture which my imagination had formed of it. The views of the greater part of the opposition to the Federal Government have, ever since the Convention, been regarded by me as permanently hostile, and likely to produce every effort that might endanger or embarrass it.

My last letter, with Colonel Carrington's communications to which it referred, will have sufficiently explained my sentiments with regard to the legislative service under the new Constitution. My

first wish is to see the Government put into quiet and successful operation ; and to afford any service that may be acceptable from me for that purpose. My second wish, if that were to be consulted, would prefer, for reasons formerly hinted, an opportunity of contributing that service in the House of Representatives, rather than in the Senate ; provided the opportunity be attainable from the spontaneous suffrage of the Constituents. Should the real friends of the Constitution think this preference inconsistent with any primary object, as Colonel Carrington tells me is the case with some who are entitled to peculiar respect, and view my renouncing it as of any material consequence, I shall not hesitate to comply. You will not infer from the freedom with which these observations are made, that I am in the least unaware of the probability that, whatever my inclinations or those of my friends may be, they are likely to be of little avail in the present case. I take it for certain that a clear majority of the Assembly are enemies to the Government, and I have no reason to suppose that I can be less obnoxious than others on the opposite side. An election into the Senate, therefore, can hardly come into question. I know also that a good deal will depend on the arrangements for the election of the other branch ; and that much may depend, moreover, on the steps to be taken by the candidates, which will not be taken by me. Here again, therefore, there must be great uncertainty, if not improbability, of my election. With these circumstances in view, it is impossible that I can be the dupe of false calculations, even if I were in other cases disposed to in-

dulge them. I trust it is equally impossible for the result, whatever it may be, to rob me of any reflections which enter into the internal fund of comfort and happiness. Popular favor or disfavor is no criterion of the character maintained with those whose esteem an honorable ambition must court. Much less can it be a criterion of that maintained with one's self. And when the spirit of party directs the public voice, it must be a little mind, indeed, that can suffer in its own estimation, or apprehend danger of suffering in that of others.¹⁶¹

DEBATES
IN THE
FEDERAL CONVENTION OF 1787.
BY JAMES MADISON,
A MEMBER.

INTRODUCTION.

NOTE.—The following paper is copied from a rough draught in the handwriting of Mr. Madison. The particular place it was intended to occupy in his works is not designated; but as it traces the causes and steps which led to the meeting of the Convention of 1787, it seems properly to preface the acts of that body. The paper bears evidence, in the paragraph preceding its conclusion, that it was written at a late period of the life of its author, when the pressure of ill health, combined with his great age, in preventing a final revision of it.

As the weakness and wants of man naturally lead to an association of individuals under a common authority, whereby each may have the protection of the whole against danger from without, and enjoy in safety within the advantages of social intercourse, and an exchange of the necessaries and comforts of life; in like manner feeble communities, independent of each other, have resorted to a union, less intimate, but with common councils, for the common safety against powerful neighbours, and for the preservation of justice and peace among themselves. Ancient history furnishes examples of these confederate associations, though with a very imperfect account of their structure, and of the attributes and functions of the presiding authority. There are examples of

modern date also, some of them still existing, the modifications and transactions of which are sufficiently known.

It remained for the British Colonies, now United States of North America, to add to those examples, one of a more interesting character than any of them; which led to a system without an example ancient or modern. A system founded on popular rights, and so combining a federal form with the forms of individual republics, as may enable each to supply the defects of the other and obtain that advantage of both.

Whilst the Colonies enjoyed the protection of the parent country, as it was called, against foreign danger, and were secured by its superintending control against conflicts among themselves, they continued independent of each other, under a common, though limited, dependence on the parental authority. When, however, the growth of the offspring in strength and in wealth awakened the jealousy, and tempted the avidity of the parent, into schemes of usurpation and exaction, the obligation was felt by the former of uniting their counsels and efforts, to avert the impending calamity.

As early as the year 1754, indications having been given of a design in the British government to levy contributions on the Colonies without their consent, a meeting of Colonial deputies took place at Al-

bany, which attempted to introduce a compromising substitute, that might at once satisfy the British requisitions, and save their own rights from violation. The attempt had no other effect, than, by bringing these rights into a more conspicuous view, to invigorate the attachment to them, on the one side; and to nourish the haughty and encroaching spirit on the other.¹⁶²

In 1774, the progress made by Great Britain in the open assertion of her pretensions, and the apprehended purpose of otherwise maintaining them by legislative enactments and declarations, had been such that the Colonies did not hesitate to assemble, by their deputies, in a formal Congress, authorized to oppose to the British innovations whatever measures might be found best adapted to the occasion; without, however, losing sight of an eventual reconciliation.¹⁶³

The dissuasive measures of that Congress being without effect, another Congress was held in 1775, whose pacific efforts to bring about a change in the views of the other party being equally unavailing, and the commencement of actual hostilities having at length put an end to all hope of reconciliation, the Congress, finding, moreover, that the popular voice began to call for an entire and perpetual dissolution of the political ties which had connected them with Great Britain, proceeded on the memorable

Fourth of July, 1776, to declare the thirteen Colonies *Independent States*.

During the discussions of this solemn act, a Committee, consisting of a member from each Colony, had been appointed, to prepare and digest a form of Confederation for the future management of the common interests, which had hitherto been left to the discretion of Congress, guided by the exigencies of the contest, and by the known intentions or occasional instructions of the Colonial Legislatures.

It appears that as early as the twenty-first of July, 1775, a plan, entitled "Articles of Confederation and *perpetual* union of the Colonies," had been sketched by Doctor Franklin, the plan being on that day submitted by him to Congress; and though not copied into their Journals, remaining on their files in his handwriting. But notwithstanding the term "perpetual" observed in the title, the Articles provided expressly for the event of a return of the Colonies to a connection with Great Britain.¹⁰⁴

This sketch became a basis for the plan reported by the Committee on the twelfth of July, now also remaining on the files of Congress in the handwriting of Mr. Dickinson. The plan, though dated after the Declaration of Independence, was probably drawn up before that event; since the name of Colonies, not States, is used throughout the draught.¹⁰⁵ The plan reported was debated and amended from time to

time, till the seventeenth of November, 1777, when it was agreed to by Congress, and proposed to the Legislatures of the States, with an explanatory and commendatory letter.¹⁶⁶ The ratifications of these, by their delegates in Congress, duly authorized, took place at successive dates; but were not completed till the first of March, 1781, when Maryland, who had made it a prerequisite that the vacant lands acquired from the British Crown should be a common fund, yielded to the persuasion that a final and formal establishment of the Federal Union and Government would make a favorable impression, not only on other foreign nations, but on Great Britain herself.¹⁶⁷

The great difficulty experienced in so framing the Federal system, as to obtain the unanimity required for its due sanction, may be inferred from the long interval, and recurring discussions, between the commencement and completion of the work; from the changes made during its progress; from the language of Congress when proposing it to the States, which dwelt on the impracticability of devising a system acceptable to all of them; from the reluctant assent given by some; and the various alterations proposed by others; and by a tardiness in others again, which produced a special address to them from Congress, enforcing the duty of sacrificing local considerations and favorite opinions to the public safety, and the necessary harmony: nor was the assent of some of

the States finally yielded without strong protests against particular Articles, and a reliance on future amendments removing their objections. It is to be recollected, no doubt, that these delays might be occasioned in some degree by an occupation of the public councils, both general and local, with the deliberations and measures essential to a revolutionary struggle; but there must have been a balance for these causes in the obvious motives to hasten the establishment of a regular and efficient government; and in the tendency of the crisis to repress opinions and pretensions which might be inflexible in another state of things.

The principal difficulties which embarrassed the progress, and retarded the completion, of the plan of Confederation, may be traced to—first, the natural repugnance of the parties to a relinquishment of power; secondly, a natural jealousy of its abuse in other hands than their own; thirdly, the rule of suffrage among parties whose inequality in size did not correspond with that of their wealth, or of their military or free population; fourthly, the selection and definition of the powers, at once necessary to the federal head, and safe to the several members.

To these sources of difficulty, incident to the formation of all such confederacies, were added two others, one of a temporary, the other of a permanent nature. The first was the case of the Crown lands,

so called because they had been held by the British Crown, and being ungranted to individuals when its authority ceased, were considered by the States within whose charters or asserted limits they lay, as devolving on them; whilst it was contended by the others, that, being wrested from the dethroned authority by the equal exertions of all, they resulted of right and in equity to the benefit of all. The lands being of vast extent, and of growing value, were the occasion of much discussion and heart-burning; and proved the most obstinate of the impediments to an earlier consummation of the plan of federal government. The State of Maryland, the last that acceded to it, held out as already noticed, till the first of March, 1781; and then yielded only to the hope that, by giving a stable and authoritative character to the Confederation, a successful termination of the contest might be accelerated. The dispute was happily compromised by successive surrenders of portions of the territory by the States having exclusive claims to it, and acceptances of them by Congress.

The other source of dissatisfaction was the peculiar situation of some of the States, which, having no convenient ports for foreign commerce, were subject to be taxed by their neighbours, through whose ports their commerce was carried on. New Jersey, placed between Philadelphia and New

York, was likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms. The Articles of Confederation provided no remedy for the complaint; which produced a strong protest on the part of New Jersey, and never ceased to be a source of dissatisfaction and discord, until the new Constitution superseded the old.

But the radical infirmity of the "Articles of Confederation" was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so many independent communities, each consulting more or less its particular interests and convenience, and distrusting the compliance of the others. Whilst the paper emissions of Congress continued to circulate, they were employed as a sinew of war, like gold and silver. When that ceased to be the case, and the fatal defect of the political system was felt in its alarming force, the war was merely kept alive, and brought to a successful conclusion, by such foreign aids and temporary expedients as could be applied; a hope prevailing with many, and a wish with all, that a state of peace, and the sources of prosperity opened by it, would give to the Confederacy, in practice, the efficiency which had been inferred from its theory.

The close of the war, however, brought no cure for the public embarrassments. The States, re-

lieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power, instead of a diminished disposition to part with it, persevered in omissions and in measures incompatible with their relations to the Federal Government, and with those among themselves.

Having served as a member of Congress through the period between March, 1780, and the arrival of peace, in 1783, I had become intimately acquainted with the public distresses and the causes of them. I had observed the successful opposition to every attempt to procure a remedy by new grants of power to Congress. I had found, moreover, that despair of success hung over the compromising principle of April, 1783, for the public necessities, which had been so elaborately planned and so impressively recommended to the States. Sympathizing, under this aspect of affairs, in the alarm of the friends of free government at the threatened danger of an abortive result to the great, and perhaps last, experiment in its favor, I could not be insensible to the obligation to aid as far as I could in averting the calamity. With this view I acceded to the desire of my fellow citizens of the County, that I should be one of its representatives in the Legislature, hoping that I might there best contribute to inculcate the critical posture to which the Revolu-

tionary cause was reduced, and the merit of a leading agency of the State in bringing about a rescue of the Union, and the blessings of liberty staked on it, from an impending catastrophe.

It required but little time after taking my seat in the House of Delegates in May, 1784, to discover, that, however favorable the general disposition of the State might be towards the Confederacy, the Legislature retained the aversion of its predecessors to transfers of power from the State to the Government of the Union; notwithstanding the urgent demands of the Federal Treasury, the glaring inadequacy of the authorized mode of supplying it, the rapid growth of anarchy in the Federal system, and the animosity kindled among the States by their conflicting regulations.

The temper of the Legislature, and the wayward course of its proceedings, may be gathered from the Journals of its sessions in the years 1784 and 1785.¹⁰⁸

The failure, however, of the varied propositions in the Legislature, for enlarging the powers of Congress; the continued failure of the efforts of Congress to obtain from them the means of providing for the debts of the Revolution, and of countervailing the commercial laws of Great Britain, a source of much irritation, and against which the separate efforts of the States were found worse than abortive;

these considerations, with the lights thrown on the whole subject by the free and full discussion it had undergone, led to a general acquiescence in the Resolution passed on the twenty-first of January, 1786, which proposed and invited a meeting of Deputies from all the States, as follows :

“Resolved, that Edmund Randolph, James Madison, Jr., Walter Jones, St. George Tucker, and Meriwether Smith, Esquires, be appointed Commissioners, who, or any three of whom, shall meet such Commissioners as may be appointed in the other States of the Union, at a time and place to be agreed on, to take into consideration the trade of the United States ; to examine the relative situations and trade of said States ; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony ; and to report to the several States such an act, relative to this great object, as, when unanimously ratified by them, will enable the United States in Congress, effectually to provide for the same.”

The Resolution had been brought forward some weeks before, on the failure of a proposed grant of power to Congress to collect a revenue from commerce, which had been abandoned by its friends in consequence of material alterations made in the grant by a Committee of the Whole. The Resolu-

tion, though introduced by Mr. Tyler, an influential member,—who, having never served in Congress, had more the ear of the House than those whose services there exposed them to an imputable bias,—was so little acceptable, that it was not then persisted in. Being now revived by him, on the last day of the session, and being the alternative of adjourning without any effort for the crisis in the affairs of the Union, it obtained a general vote; less, however, with some of its friends, from a confidence in the success of the experiment, than from a hope that it might prove a step to a more comprehensive and adequate provision for the wants of the Confederacy.¹⁰

It happened also, that Commissioners, appointed by Virginia and Maryland to settle the jurisdiction on waters dividing the two States, had, apart from their official reports, recommended a uniformity in the regulations of the two States on several subjects, and particularly on those having relation to foreign trade. It appeared at the same time, that Maryland had deemed a concurrence of her neighbours, Delaware and Pennsylvania, indispensable in such a case; who, for like reasons, would require that of their neighbours. So apt and forcible an illustration of the necessity of an uniformity throughout all the States could not but favor the passage of a resolu-

tion which proposed a Convention having that for its object.

The Commissioners appointed by the Legislature, and who attended the Convention, were Edmund Randolph, the Attorney of the State, St. George Tucker and James Madison. The designation of the time and place to be proposed for its meeting, and communicated to the States, having been left to the Commissioners, they named, for the time the first Monday in September, and for the place the city of Annapolis, avoiding the residence of Congress, and large commercial cities, as liable to suspicions of an extraneous influence.

Although the invited meeting appeared to be generally favored, five States only assembled; some failing to make appointments, and some of the individuals appointed not hastening their attendance; the result in both cases being ascribed mainly to a belief that the time had not arrived for such a political reform as might be expected from a further experience of its necessity.

But in the interval between the proposal of the Convention and the time of its meeting, such had been the advance of public opinion in the desired direction, stimulated as it had been by the effect of the contemplated object of the meeting, in turning the general attention to the critical state of things, and in calling forth the sentiments and exertions of

the most enlightened and influential patriots, that the Convention, thin as it was, did not scruple to decline the limited task assigned to it, and to recommend to the States a Convention with powers adequate to the occasion. Nor had it been unnoticed that the commission of the New Jersey deputation had extended its object to a general provision for the exigencies of the Union. A recommendation for this enlarged purpose was accordingly reported by a committee to whom the subject had been referred. It was drafted by Col. Hamilton, and finally agreed to in the following form :

“To the Honorable, the Legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York, the Commissioners from the said States, respectively, assembled at Annapolis, humbly beg leave to report :

“That, pursuant to their several appointments, they met at Annapolis, in the State of Maryland, on the eleventh day of September instant ; and having proceeded to a communication of their powers, they found that the States of New York, Pennsylvania and Virginia, had, in substance, and nearly in the same terms, authorized their respective Commissioners ‘to meet such commissioners as were, or might be, appointed by the other States of the Union, at such time and place as should be agreed upon by the said Commissioners, to take

into consideration the trade and commerce of the United States; to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony; and to report to the several States such an act, relative to this great object, as, when unanimously ratified by them, would enable the United States in Congress assembled effectually to provide for the same.'

"That the State of Delaware had given similar powers to their Commissioners, with this difference only, that the act to be framed in virtue of these powers is required to be reported 'to the United States in Congress assembled, to be agreed to by them, and confirmed by the Legislature of every State.'

"That the State of New Jersey had enlarged the object of their appointment, empowering their commissioners, 'to consider how far an uniform system in their commercial regulations, and *other important matters*, might be necessary to the common interest and permanent harmony of the several States;' and to report such an act on the subject, as, when ratified by them, 'would enable the United States in Congress assembled effectually to provide for the exigencies of the Union.'

"That appointments of Commissioners have also been made by the States of New Hampshire, Mas-

sachusetts, Rhode Island, and North Carolina, none of whom, however, have attended; but that no information has been received by your Commissioners of any appointment having been made by the States of Maryland, Connecticut, South Carolina or Georgia.

“That the express terms of the powers to your Commissioners supposing a deputation from all the States, and having for object the trade and commerce of the United States, your Commissioners did not conceive it advisable to proceed on the business of their mission under the circumstances of so partial and defective a representation.

“Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your Commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken to effect a general meeting of the States in a future Convention, for the same and such other purposes, as the situation of public affairs may be found to require.

“If, in expressing this wish, or in intimating any other sentiment, your Commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct dictated by an anxiety for the welfare of the United States will not fail to receive an indulgent construction.

“In this persuasion, your Commissioners submit an

opinion, that the idea of extending the powers of their Deputies to other objects than those of commerce, which has been adopted by the State of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future Convention. They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the Federal Government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the Federal system.

“That there are important defects in the system of the Federal Government, is acknowledged by the acts of all those States which have concurred in the present meeting. That the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode which will unite the sentiments and councils of all the States. In the choice of the mode, your Commissioners are of opinion, that a Convention of deputies

from the different States, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularized.

“Your Commissioners decline an enumeration of those national circumstances on which their opinion, respecting the propriety of a future Convention with more enlarged powers, is founded; as it would be an useless intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious, as, in the view of your Commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

“Under this impression, your Commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, if the States by whom they have been respectively delegated would themselves concur, and use their endeavors to procure the concurrence of the other States, in the appointment of Commissioners, to meet

at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States; to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose, to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the Legislatures of every State, will effectually provide for the same.

“Though your Commissioners could not with propriety address these observations and sentiments to any but the States they have the honor to represent, they have nevertheless concluded, from motives of respect, to transmit copies of this Report to the United States in Congress assembled, and to the Executives of the other States.”¹⁷⁰

The recommendation was well received by the Legislature of Virginia, which happened to be the *first* that *acted* on it; and the example of her compliance was made as conciliatory and impressive as possible. The Legislature were unanimous, or very nearly so, on the occasion. As a proof of the magnitude and solemnity attached to it, they placed General Washington at the head of the deputation from the State; and as a proof of the deep interest he felt in the case, he overstepped the obstacles to his acceptance of the appointment.

The law complying with the recommendation from Annapolis was in the terms following :

“Whereas, the Commissioners who assembled at Annapolis, on the fourteenth day of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the commercial interests of the United States, have represented the necessity of extending the revision of the Federal system to all its defects; and have recommended that deputies for that purpose be appointed by the several Legislatures, to meet in Convention in the City of Philadelphia, on the second Monday of May next,—a provision which seems preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would, besides, be deprived of the valuable counsels of sundry individuals who are disqualified by the constitutions or laws of particular States, or restrained by peculiar circumstances, from a seat in that Assembly :

“And whereas, the General Assembly of this Commonwealth, taking into view the actual situation of the Confederacy, as well as reflecting on the alarming representations made from time to time, by the United States in Congress, particularly in their act of the fifteenth day of February last, can no longer doubt that the crisis is arrived at which

the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that union which they have cemented with so much of their common blood; or whether, by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution, and furnish to its enemies an eventual triumph over those, by whose virtue and valour, it has been accomplished:

“And whereas, the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the citizens of this Commonwealth to unite with their brethren of the other States, in establishing a federal government, cannot but be felt with equal force now, as motives to lay aside every inferior consideration, and to concur in such farther concessions and provisions, as may be necessary to secure the great objects for which that government was instituted, and to render the United States as happy in peace, as they have been glorious in war.

“Be it, therefore, enacted, by the General Assembly of the Commonwealth of Virginia, That seven Commissioners be appointed by joint ballot of both Houses of Assembly, who, or any three of them, are

hereby authorized as Deputies from this Commonwealth, to meet such Deputies as may be appointed and authorized by other States, to assemble in Convention at Philadelphia, as above recommended, and to join with them in devising and discussing all such alterations and farther provisions, as may be necessary to render the Federal Constitution adequate to the exigencies of the Union; and in reporting such an act for that purpose, to the United States in Congress, as when agreed to by them, and duly confirmed by the several States, will effectually provide for the same.

“And be it further enacted, That in case of the death of any of the said deputies, or of their declining their appointments, the Executive are hereby authorized to supply such vacancies; and the Governor is requested to transmit forthwith a copy of this act to the United States in Congress, and to the Executives of each of the States in the Union.”*¹⁷

A resort to a General Convention, to re-model the Confederacy, was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting and foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May, 1781, at the seat of Congress, Pelatiah Webster, an able though not conspicuous citizen, after discussing the fiscal system of

* Drawn by J. Madison, passed the House of Delegates November 9th, the Senate November 23d—and Deputies appointed December 4th, 1786.

the United States, and suggesting, among other remedial provisions, one including a national bank, remarks, that "the authority of Congress at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *Continental Convention* for the express purpose of ascertaining, defining, enlarging and limiting, the duties and powers of their Constitution."¹⁷²

On the first day of April, 1783, Colonel Hamilton, in a debate in Congress, observed, "that he wished, instead of them (partial Conventions), to see a general Convention take place; and that he should soon, in pursuance of instructions from his constituents, propose to Congress a plan for that purpose, the object of which would be to strengthen the Federal Constitution." He alluded, probably, to the resolutions introduced by General Schuyler in the Senate, and passed unanimously by the Legislature, of New York in the summer of 1782, declaring, that the Confederation was defective, in not giving Congress power to provide a revenue for itself, or in not investing them with funds from established and productive sources; and that it would be advisable for Congress to recommend to the States to call a general Convention to revise and amend the Confederation." It does not appear, however, that his expectation had been fulfilled.¹⁷³

In a letter to James Madison from R. H. Lee, then

President of Congress, dated the twenty-sixth of November, 1784, he says: "It is by many here suggested as a very necessary step for Congress to take, the calling on the States to form a Convention for the sole purpose of revising the Confederation, so far as to enable Congress to execute with more energy, effect and vigor the powers assigned to it, than it appears by experience that they can do under the present state of things." The answer of Mr. Madison remarks: "I hold it for a maxim, that the union of the States is essential to their safety against foreign danger and internal contention; and that the perpetuity and efficacy of the present system cannot be confided in. The question, therefore, is, in what mode, and at what moment, the experiment for supplying the defects ought to be made."

In the winter of 1784-5, Noah Webster, whose political and other valuable writings had made him known to the public, proposed, in one of his publications, "a new system of government which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect."¹⁷⁴

The proposed and expected Convention at Annapolis, the first of a general character that appears to have been realized, and the state of the public mind awakened by it, had attracted the particular attention of Congress, and favored the idea there of a

Convention with fuller powers for amending the Confederacy.*

It does not appear that in any of these cases the reformed system was to be otherwise sanctioned than by the Legislative authority of the States; nor whether, nor how far, a change was to be made in the structure of the depository of Federal powers.

The act of Virginia providing for the Convention at Philadelphia was succeeded by appointments from the other States as their Legislatures were assembled, the appointments being selections from the most experienced and highest standing citizens. Rhode Island was the only exception to a compliance with the recommendation from Annapolis, well known to have been swayed by an obdurate adherence to an advantage which her position gave her, of taxing her neighbours through their consumption of imported supplies, an advantage which it was foreseen would be taken from her by a revisal of the Articles of Confederation.

As the public mind had been ripened for a salutary reform of the political system, in the interval between the proposal and the meeting of the Commissioners at Annapolis, the interval between the last event and the meeting of deputies at Philadel-

* The letters of Wm. Grayson, March 22, 1786, and of James Monroe, of April 28th, 1786, both then members, to Mr. Madison, state that a proposition for such a Convention had been made.

phia had continued to develop more and more the necessity and the extent of a systematic provision for the preservation and government of the Union. Among the ripening incidents was the insurrection of Shays, in Massachusetts, against her government; which was with difficulty suppressed, notwithstanding the influence on the insurgents of an apprehended interposition of the Federal troops.

At the date of the Convention, the aspect and retrospect of the political condition of the United States could not but fill the public mind with a gloom which was relieved only by a hope that so select a body would devise an adequate remedy for the existing and prospective evils so impressively demanding it.

It was seen that the public debt, rendered so sacred by the cause in which it had been incurred, remained without any provision for its payment. The reiterated and elaborate efforts of Congress to procure from the States a more adequate power to raise the means of payment, had failed. The effect of the ordinary requisitions of Congress had only displayed the inefficiency of the authority making them, none of the States having duly complied with them, some having failed altogether, or nearly so; while in one instance, that of New Jersey,* a compliance

* A letter of Mr. Grayson to Mr. Madison of March 22, 1786, relating the conduct of New Jersey, states this fact.

was *expressly* refused; nor was more yielded to the expostulations of members of Congress deputed to her Legislature, than a mere repeal of the law, without a compliance. The want of authority in Congress to regulate commerce had produced in foreign nations, particularly Great Britain, a monopolizing policy, injurious to the trade of the United States, and destructive to their navigation; the imbecility, and anticipated dissolution, of the Confederacy extinguishing all apprehensions of a counter-vailing policy on the part of the United States. The same want of a general power over commerce led to an exercise of the power, separately, by the States, which not only proved abortive, but engendered rival, conflicting and angry regulations. Besides the vain attempts to supply their respective treasuries by imposts, which turned their commerce into the neighbouring ports, and to coerce a relaxation of the British monopoly of the West India navigation, which was attempted by Virginia,* the States having ports for foreign commerce, taxed and irritated the adjoining States, trading through them, as New York, Pennsylvania, Virginia, and South Carolina. Some of the States, as Connecticut, taxed imports from others, as from Massachusetts, which complained in a letter to the Executive of Virginia,

* See the Journal of her Legislature.

and doubtless to those of other States. In sundry instances, as of New York, New Jersey, Pennsylvania and Maryland, the navigation laws treated the citizens of other States as aliens. In certain cases the authority of the Confederacy was disregarded, as in violation, not only of the Treaty of Peace, but of treaties with France and Holland; which were complained of to Congress. In other cases the Federal authority was violated by treaties and wars with Indians, as by Georgia; by troops raised and kept up without the consent of Congress, as by Massachusetts; by compacts without the consent of Congress, as between Pennsylvania and New Jersey, and between Virginia and Maryland. From the Legislative Journals of Virginia it appears, that a vote refusing to apply for a sanction of Congress was followed by a vote against the communication of the compact to Congress. In the internal administration of the States, a violation of contracts had become familiar, in the form of depreciated paper made a legal tender, of property substituted for money, of instalment laws, and of the occlusions of the courts of justice, although evident that all such interferences affected the rights of other States, relatively creditors, as well as citizens creditors within the State. Among the defects which had been severely felt was want of an uniformity in cases requiring it, as laws of naturalization and bank-

ruptcy, a coercive authority operating on individuals, and a guarantee of the internal tranquillity of the States.

As a natural consequence of this distracted and disheartening condition of the Union, the Federal authority had ceased to be respected abroad, and dispositions were shown there, particularly in Great Britain, to take advantage of its imbecility, and to speculate on its approaching downfall. At home it had lost all confidence and credit; the unstable and unjust career of the States had also forfeited the respect and confidence essential to order and good government, involving a general decay of confidence and credit between man and man. It was found, moreover, that those least partial to popular government, or most distrustful of its efficacy, were yielding to anticipations, that from an increase of the confusion a government might result more congenial with their taste or their opinions; whilst those most devoted to the principles and forms of Republics were alarmed for the cause of liberty itself, at stake in the American experiment, and anxious for a system that would avoid the inefficacy of a mere confederacy, without passing into the opposite extreme of a consolidated government. It was known that there were individuals who had betrayed a bias towards monarchy, and there had always been some not unfavorable to a partition of

the Union into several confederacies; either from a better chance of figuring on a sectional theatre, or that the sections would require stronger governments, or by their hostile conflicts lead to a monarchical consolidation. The idea of dismemberment had recently made its appearance in the newspapers.

Such were the defects, the deformities, the diseases and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding and appreciating the constitutional charter, the remedy that was provided.¹⁷⁶

As a sketch on paper, the earliest, perhaps, of a Constitutional Government for the Union (organized into the regular departments, with physical means operating on individuals) to be sanctioned by *the people of the States*, acting in their original and sovereign character, was contained in the letters of James Madison to Thomas Jefferson of the nineteenth of March; to Governor Randolph of the eighth of April; and to General Washington of the sixteenth of April, 1787, for which see their respective dates.¹⁷⁷

The feature, in these letters which vested in the general authority a negative on the laws of the States, was suggested by the negative in the head of the British Empire, which prevented collisions between the parts and the whole, and between the

parts themselves. It was supposed that the substitution of an elective and responsible authority, for an hereditary and irresponsible one, would avoid the appearance even of a departure from Republicanism. But although the subject was so viewed in the Convention, and the votes on it were more than once equally divided, it was finally and justly abandoned, as, apart from other objections, it was not practicable among so many States, increasing in number, and enacting, each of them, so many laws. Instead of the proposed negative, the objects of it were left as finally provided for in the Constitution.¹⁷⁷

On the arrival of the Virginia Deputies at Philadelphia, it occurred to them, that, from the early and prominent part taken by that State in bringing about the Convention, some initiative step might be expected from them. The Resolutions introduced by Governor Randolph were the result of a consultation on the subject, with an understanding that they left all the Deputies entirely open to the lights of discussion, and free to concur in any alterations or modifications which their reflections and judgments might approve. The Resolutions, as the Journals show, became the basis on which the proceedings of the Convention commenced, and to the developements, variations and modifications of which the plan of government proposed by the Convention may be traced.¹⁷⁸

The curiosity I had felt during my researches into the history of the most distinguished confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it, more especially in what related to the process, the principles, the reasons, and the anticipations, which prevailed in the formation of them, determined me to preserve, as far as I could, an exact account of what might pass in the Convention whilst executing its trust; with the magnitude of which I was duly impressed, as I was by the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, and the reasonings, from which the new system of government was to receive its peculiar structure and organization. Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world.

In pursuance of the task I had assumed, I chose a seat in front of the presiding member, with the other members on my right and left hands. In this favorable position for hearing all that passed, I noted, in terms legible and in abbreviations and marks intelligible to myself, what was read from the Chair or spoken by the members; and losing not a moment unnecessarily between the adjournment

and reassembling of the Convention, I was enabled to write out my daily notes during the session, or within a few finishing days after its close, in the extent and form preserved in my own hand on my files.

In the labor and correctness of this I was not a little aided by practice, and by a familiarity with the style and the train of observation and reasoning which characterized the principal speakers. It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one.

It may be proper to remark, that, with a very few exceptions, the speeches were neither furnished, nor revised, nor sanctioned, by the speakers, but written out from my notes, aided by the freshness of my recollections. A further remark may be proper, that views of the subject might occasionally be presented, in the speeches and proceedings, with a latent reference to a compromise on some middle ground, by mutual concessions. The exceptions alluded to were,—first, the sketch furnished by Mr. Randolph of his speech on the introduction of his propositions, on the twenty-ninth day of May; secondly, the speech of Mr. Hamilton, who happened to call on me when putting the last hand to it, and who acknowledged its fidelity, without sug-

gesting more than a very few verbal alterations which were made; thirdly, the speech of Gouverneur Morris on the second day of May, which was communicated to him on a like occasion, and who acquiesced in it without even a verbal change. The correctness of his language and the distinctness of his enunciation were particularly favorable to a reporter. The speeches of Doctor Franklin, excepting a few brief ones, were copied from the written ones read to the Convention by his colleague, Mr. Wilson, it being inconvenient to the Doctor to remain long on his feet.

Of the ability and intelligence of those who composed the Convention the debates and proceedings may be a test; as the character of the work which was the offspring of their deliberations must be tested by the experience of the future, added to that of nearly half a century which has passed.

But whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or

anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787, to the object of devising and proposing a constitutional system which should best supply the defects of that which it was to replace, and best secure the permanent liberty and happiness of their country.

DEBATES

IN THE

FEDERAL CONVENTION OF 1787.

MONDAY, MAY 14TH, 1787,

Was the day fixed for the meeting of the Deputies in Convention, for revising the federal system of government. On that day a small number only had assembled. Seven States were not convened till,

FRIDAY, MAY 25TH.

When the following members appeared :

From

MASSACHUSETTS,	Rufus King.
NEW YORK,	Robert Yates, and Alexander Hamilton.
NEW JERSEY,	David Brearly, William Churchill Houston, and William Patterson.
PENNSYLVANIA,	Robert Morris, Thomas Fitzsimons, James Wilson, and Gouverneur Morris.
DELAWARE,	George Read, Richard Basset, and Jacob Broom.

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VIRGINIA,

George Washington,
Edmund Randolph,
John Blair,
James Madison,
George Mason,
George Wythe, and
James McClurg.

NORTH CAROLINA,

Alexander Martin,
William Richardson Davie,
Richard Dobbs Spaight, and
Hugh Williamson.

SOUTH CAROLINA,

John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney, and
Pierce Butler.

GEORGIA,

William Few.

Mr. ROBERT MORRIS informed the members assembled, that, by the instruction and in behalf of the deputation of Pennsylvania, he proposed GEORGE WASHINGTON, Esquire, late Commander-in-Chief, for President of the Convention.* Mr. JOHN RUTLEDGE seconded the motion, expressing his confidence that the choice would be unanimous; and observing, that the presence of General WASHINGTON forbade any observations on the occasion which might otherwise be proper.

General WASHINGTON was accordingly unanimously elected by ballot, and conducted to the Chair by

* The nomination came with particular grace from Pennsylvania, as Doctor Franklin alone could have been thought of as a competitor. The Doctor was himself to have made the nomination of General Washington, but the state of the weather and of his health confined him to his house.

Mr. R. MORRIS and Mr. RUTLEDGE; from which, in a very emphatic manner, he thanked the Convention for the honor they had conferred on him; reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the House towards the involuntary errors which his inexperience might occasion.

Mr. WILSON moved that a Secretary be appointed, and nominated **Mr. Temple Franklin**.

Colonel HAMILTON nominated **Major Jackson**. On the ballot **Major Jackson** had five votes, and **Mr. Franklin** two votes.

On reading the credentials of the Deputies, it was noticed that those from Delaware were prohibited from changing the Article in the Confederation establishing an equality of votes among the States.^m

The appointment of a Committee, on the motion of **Mr. C. PINCKNEY**, consisting of **Messrs. WYTHE, HAMILTON, and C. PINCKNEY**, to prepare standing rules and orders, was the only remaining step taken on this day.

MONDAY, MAY 28TH.

In Convention,—From Massachusetts, **NATHANIEL GORHAM** and **CALEB STRONG**; from Connecticut, **OLIVER ELLSWORTH**; from Delaware, **GUNNING BEDFORD**; from Maryland, **JAMES McHENRY**; from Pennsylvania, **BENJAMIN FRANKLIN**, **GEORGE CLYMER**, **THOMAS MIFFLIN**, and **JARED INGERSOLL**,—took their seats.

Mr. WYTHER, from the Committee for preparing rules, made a report, which employed the deliberations of this day.

Mr. KING objected to one of the rules in the report authorizing any member to call for the Yeas and Nays and have them entered on the minutes. He urged, that as the acts of the Convention were not to bind the constituents, it was unnecessary to exhibit this evidence of the votes; and improper, as changes of opinion would be frequent in the course of the business, and would fill the minutes with contradictions.

Colonel MASON seconded the objection, adding, that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulged, must furnish handles to the adversaries of the result of the meeting.

The proposed rule was rejected, *nem. con.* The standing rules agreed to were as follows :

RULES.

“ A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented. But a less number than seven may adjourn from day to day.

“ Immediately after the President shall have taken the Chair, and the members their seats, the minutes of the preceding day shall be read by the Secretary.

“ Every member, rising to speak, shall address the President; and, whilst he shall be speaking, none

shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript. And of two members rising to speak at the same time, the President shall name him who shall be first heard.

“A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other who had been silent shall have been heard, if he choose to speak upon the subject.

“A motion, made and seconded, shall be repeated, and, if written, as it shall be when any member shall so require, read aloud, by the Secretary, before it shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

“Orders of the day shall be read next after the minutes; and either discussed or postponed, before any other business shall be introduced.

“When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

“A question which is complicated shall, at the request of any member, be divided, and put separately upon the propositions of which it is compounded.

“The determination of a question, although fully debated, shall be postponed, if the Deputies of any State desire it, until the next day.

“A writing which contains any matter brought on to be considered shall be read once throughout, for information; then by paragraphs, to be debated; and again, with the amendments, if any, made on

the second reading; and afterwards the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

“Committees shall be appointed by ballot; and the members who have the greatest number of ballots, although not a majority of the votes present, shall be the Committee. When two or more members have an equal number of votes, the member standing first on the list, in the order of taking down the ballots, shall be preferred.

“A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct, or expressions, supposed to be reprehensible. And all questions of order shall be decided by the President, without appeal or debate.

“Upon a question to adjourn, for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

“When the House shall adjourn, every member shall stand in his place until the President pass him.”*

* Previous to the arrival of a majority of the States, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris, and favored by Robert Morris and others from Pennsylvania, that the large States should unite in firmly refusing to the small States an equal vote, as unreasonable, and as enabling the small States to negative every good system of government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small States; and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective government, than, on taking the field of discussion, to disarm themselves of the right, and thereby throw themselves on the mercy of the larger States, discountenanced and stifled the project.

A letter from sundry persons of the State of Rhode Island, addressed to the Chairman of the General Convention, was presented to the Chair by Mr. GOUVERNEUR MORRIS; and, being read, was ordered to lie on the table for further consideration.*

Mr. BUTLER moved that the House provide against interruption of business by absence of members, and against licentious publications of their proceedings. To which was added, by Mr. SPAIGHT, a motion to provide, that, on the one hand, the House might not be precluded by a vote upon any question from revising the subject matter of it, when they see cause, nor, on the other hand, be led too hastily to rescind a decision which was the result of mature discussion. Whereupon it was ordered, that these motions be referred for the consideration of the Committee appointed to draw up the standing rules, and that the Committee make report thereon.

Adjourned till to-morrow, at ten o'clock.

TUESDAY, MAY 29TH.

In Convention,—JOHN DICKINSON, and ELBRIDGE GERRY, the former from Delaware, the latter from Massachusetts, took their seats. The following

* For the letter, see Appendix, No. 1.

rules were added, on the Report of Mr. WYTHE, from the Committee—

“That no member be absent from the House, so as to interrupt the representation of the State, without leave.

“That Committees do not sit whilst the House shall be, or ought to be, sitting.

“That no copy be taken of any entry on the Journal during the sitting of the House, without leave of the House.

“That members only be permitted to inspect the Journal.

“That nothing spoken in the House be printed, or otherwise published, or communicated without leave.

“That a motion to reconsider a matter which has been determined by a majority, may be made, with leave, unanimously given, on the same day on which the vote passed ; but otherwise, not without one day's previous notice ; in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose.”

Mr. C. PINCKNEY moved, that a Committee be appointed to superintend the minutes.

Mr. G. MORRIS objected to it. The entry of the proceedings of the Convention belonged to the Secretary as their impartial officer. A Committee might have an interest and bias in moulding the the entry, according to their opinions and wishes.

The motion was negatived, five Noes, four Ayes.

Mr. RANDOLPH then opened the main business :—

He expressed his regret, that it should fall to him, rather than those who were of longer standing in

life and political experience, to open the great subject of their mission. But as the Convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall.

He observed, that, in revising the federal system we ought to inquire, first, into the properties which such a government ought to possess; secondly, the defects of the Confederation; thirdly the danger of our situation; and fourthly, the remedy.

1. The character of such a government ought to secure, first, against foreign invasion; secondly, against dissensions between members of the Union, or seditions in particular States; thirdly, to procure to the several States various blessings of which an isolated situation was incapable; fourthly, it should be able to defend itself against encroachment; and fifthly, to be paramount to the State Constitutions.

2. In speaking of the defects of the Confederation, he professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science of constitutions, and of confederacies; when the inefficiency of requisitions was unknown—no commercial discord had arisen among any States—no rebellion had appeared, as in Massachusetts—foreign debts had not become urgent—the havoc of paper-money had not been foreseen—treaties had not been violated—and perhaps nothing better could be obtained, from the

jealousy of the States with regard to their sovereignty.

He then proceeded to enumerate the defects:—First, that the Confederation produced no security against foreign invasion; Congress not being permitted to prevent a war, nor to support it by their own authority. Of this he cited many examples; most of which tended to shew, that they could not cause infractions of treaties, or of the law of nations, to be punished; that particular States might by their conduct provoke war without control; and that, neither militia nor drafts being fit for defence on such occasions, enlistments only could be successful, and these could not be executed without money.

Secondly, that the Federal Government could not check the quarrel between States, nor a rebellion in any, not having constitutional power nor means to interpose according to the exigency.

Thirdly, that there were many advantages which the United States might acquire, which were not attainable under the Confederation—such as a productive impost—counteraction of the commercial regulations of other nations—pushing of commerce *ad libitum*, &c. &c.

Fourthly, that the Federal Government could not defend itself against encroachments from the States.

Fifthly, that it was not even paramount to the State Constitutions, ratified as it was in many of the States.

3. He next reviewed the danger of our situation; and appealed to the sense of the best friends of the

United States—to the prospect of anarchy from the laxity of government every where—and to other considerations.

4. He then proceeded to the remedy; the basis of which he said must be the republican principle.

He proposed, as conformable to his ideas, the following resolutions, which he explained one by one.

1. “Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, “common defence, security of liberty, and general welfare.”

2. “Resolved, therefore, that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

3. “Resolved, that the National Legislature ought to consist of two branches.

4. “Resolved, that the members of the first branch of the National Legislature ought to be elected by the people of the several States every —— for the term of ——; to be of the age of —— years at least; to receive liberal stipends by which they may be compensated for the devotion of their time to the public service; to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belong, to the functions of the first branch, during the term of service, and for the space of —— after its expiration; to be incapable of re-election for the space of —— after the expiration

of their term of service, and to be subject to recall.

5. "Resolved, that the members of the second branch of the National Legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual Legislatures, to be of the age of ——— years at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service; and for the space of ——— after the expiration thereof.

6. "Resolved, that each branch ought to possess the right of originating acts; that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the Articles thereof.

7. "Resolved, that a National Executive be instituted; to be chosen by the National Legislature for

the term of ———; to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase nor diminution shall be made, so as to affect the magistracy existing at the time of increase or diminution; and to be ineligible a second time; and that, besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.

8. "Resolved, that the Executive, and a convenient number of the national Judiciary, ought to compose a Council of Revision, with authority to examine every act of the National Legislature, before it shall operate, and every act of a particular Legislature before a negative thereon shall be final; and that the dissent of the said Council shall amount to a rejection, unless the act of the National Legislature be again passed, or that of a particular Legislature be again negatived by ——— of the members of each branch.

9. "Resolved, that a National Judiciary be established; to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature; to hold their offices during good behaviour, and to receive punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the dernier resort, all piracies and felonies on the high seas; captures from an enemy; cases in which

foreigners, or citizens of other States, applying to such jurisdictions, may be interested; or which respect the collection of the national revenue; impeachments of any national officers, and questions which may involve the national peace and harmony.

10. "Resolved, that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

11. "Resolved, that a republican government, and the territory of each State, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each State.

12. "Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

13. "Resolved, that provision ought to be made for the amendment of the Articles of Union, whenever it shall seem necessary; and that the assent of the National Legislature ought not to be required thereto.

"14. Resolved, that the legislative, executive, and judiciary powers, within the several States ought to be bound by oath to support the Articles of Union.

"15. Resolved, that the amendments which shall be offered to the Confederation, by the Convention,

ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several Legislatures, to be expressly chosen by the people to consider and decide thereon."

He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the United States to pass away unimproved.*

It was then resolved, that the House will tomorrow resolve itself into a Committee of the Whole House, to consider of the state of the American Union; and that the propositions moved by Mr. RANDOLPH be referred to the said Committee.

Mr. CHARLES PINCKNEY laid before the House the draft of a federal government which he had prepared, to be agreed upon between the free and independent States of America :

PLAN OF A FEDERAL CONSTITUTION.†

We, the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following Constitution, for the government of ourselves and posterity.

* This abstract of the speech was furnished to James Madison by Mr. Randolph, and is in his hand-writing.

† See Appendix, No. 2., for notes on Mr. Pinckney's plan.

ARTICLE I.

"The style of this government shall be, The United States of America, and the government shall consist of supreme legislative, executive and judicial powers.

ARTICLE II.

"The legislative power shall be vested in a Congress, to consist of two separate Houses; one to be called the House of Delegates; and the other the Senate, who shall meet on the _____ day of _____ in every year.

ARTICLE III.

"The members of the House of Delegates shall be chosen every _____ year by the people of the several States; and the qualification of the electors shall be the same as those of the electors in the several States for their Legislatures. Each member shall have been a citizen of the United States for _____ years; and shall be of _____ years of age, and a resident in the State he is chosen for. Until a census of the people shall be taken in the manner hereinafter mentioned, the House of Delegates shall consist of _____, to be chosen from the different States in the following proportions: for New Hampshire, _____; for Massachusetts, _____; for Rhode Island, _____; for Connecticut, _____; for New York, _____; for New Jersey, _____; for Pennsylvania, _____; for Delaware, _____; for Maryland, _____;

for Virginia, ———; for North Carolina, ———; for South Carolina, ———; for Georgia, ———; and the Legislature shall hereinafter regulate the number of Delegates by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every ——— thousand. All money bills of every kind shall originate in the House of Delegates, and shall not be altered by the Senate. The House of Delegates shall exclusively possess the power of impeachment, and shall choose its own officers; and vacancies therein shall be supplied by the executive authority of the State in the representation from which they shall happen.

ARTICLE IV.

“The Senate shall be elected and chosen by the House of Delegates; which House, immediately after their meeting, shall choose by ballot ——— Senators from among the citizens and residents of New Hampshire; ——— from among those of Massachusetts; ——— from among those of Rhode Island; ——— from among those of Connecticut; ——— from among those of New York; ——— from among those of New Jersey; ——— from among those of Pennsylvania; ——— from among those of Delaware; ——— from among those of Maryland; ——— from among those of Virginia; ——— from among those of North Carolina; ——— from among those of South Carolina; and ——— from among those of Georgia. The Senators chosen from New Hampshire, Massachusetts, Rhode Island, and Connecticut, shall form one class;

those from New York, New Jersey, Pennsylvania, and Delaware, one class; and those from Maryland, Virginia, North Carolina, South Carolina, and Georgia, one class. The House of Delegates shall number these classes one, two, and three; and fix the times of their service by lot. The first class shall serve for ——— years; the second for ——— years; and the third for ——— years. As their times of service expire, the House of Delegates shall fill them up by elections for ——— years; and they shall fill all vacancies that arise from death or resignation, for the time of service remaining of the members so dying or resigning. Each Senator shall be ——— years of age at least; and shall have been a citizen of the United States for four years before his election; and shall be a resident of the State he is chosen from. The Senate shall choose its own officers.

ARTICLE V.

“Each State shall prescribe the time and manner of holding elections by the people for the House of Delegates; and the House of Delegates shall be the judges of the elections, returns, and qualifications of their members.

“In each House a majority shall constitute a quorum to do business. Freedom of speech and debate in the Legislature shall not be impeached, or questioned, in any place out of it; and the members of both Houses shall in all cases, except for treason, felony, or breach of the peace, be free from arrest during their attendance on Congress, and in going to and returning from it. Both Houses shall keep

Journals of their proceedings, and publish them, except on secret occasions; and the Yeas and Nays may be entered thereon at the desire of one _____ of the members present. Neither House, without the consent of the other, shall adjourn for more than _____ days, nor to any place but where they are sitting.

“The members of each House shall not be eligible to, or capable of holding, any office under the Union, during the time for which they have been respectively elected; nor the members of the Senate for one year after. The members of each House shall be paid for their services by the States which they represent. Every bill which shall have passed the Legislature shall be presented to the President of the United States for his revision; if he approves it, he shall sign it; but if he does not approve it, he shall return it, with his objections, to the House it originated in; which House, if two-thirds of the members present, notwithstanding the President's objections, agree to pass it, shall send it to the other House, with the President's objections; where if two-thirds of the members present also agree to pass it, the same shall become a law; and all bills sent to the President, and not returned by him within _____ days, shall be laws, unless the Legislature, by their adjournment, prevent their return; in which case they shall not be laws.

ARTICLE VI.

“The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts, and excises;

To regulate commerce with all nations, and among the several States ;

To borrow money and emit bills of credit ;

To establish post-offices ;

To raise armies ;

To build and equip fleets ;

To pass laws for arming, organizing, and disciplining the militia of the United States.

To subdue a rebellion in any State, on application of its Legislature ;

To coin money, and regulate the value of all coins, and fix the standard of weights and measures ;

To provide such dockyards and arsenals, and erect such fortifications as may be necessary for the United States, and to exercise exclusive jurisdiction therein ;

To appoint a Treasurer, by ballot ;

To constitute tribunals inferior to the Supreme Court ;

To establish post and military roads ;

To establish and provide for a national university at the seat of government of the United States ;

To establish uniform rules of naturalization ;

To provide for the establishment of a seat of government for the United States, not exceeding ——— miles square, in which they shall have exclusive jurisdiction ;

To make rules concerning captures from an enemy ;

To declare the law and punishment of piracies and felonies at sea, and of counterfeiting coin, and of all offences against the laws of nations ;

To call forth the aid of the militia to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws for carrying the foregoing powers into execution.

“The Legislature of the United States shall have the power to declare the punishment of treason, which shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses.

“The proportion of direct taxation shall be regulated by the whole number of inhabitants of every description; which number shall, within — years after the first meeting of the Legislature, and within the term of every — year after, be taken in the manner to be prescribed by the Legislature.

“No tax shall be laid on articles exported from the States; nor capitation tax, but in proportion to the census before directed.

“All laws regulating commerce shall require the assent of two-thirds of the members present in each House. The United States shall not grant any title of nobility. The Legislature of the United States shall pass no law on the subject of religion; nor touching or abridging the liberty of the press; nor shall the privilege of the writ of Habeas Corpus ever be suspended, except in case of rebellion or invasion.

“All acts made by the Legislature of the United States, pursuant to this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the land; and all judges

shall be bound to consider them as such in their decisions.

ARTICLE VII.

“The Senate shall have the sole and exclusive power to declare war; and to make treaties; and to appoint ambassadors and other ministers to foreign nations, and judges of the Supreme Court.

“They shall have the exclusive power to regulate the manner of deciding all disputes and controversies now existing, or which may arise, between the States, respecting jurisdiction or territory.

ARTICLE VIII.

“The executive power of the United States shall be vested in a President of the United States of America, which shall be his style; and his title shall be His Excellency. He shall be elected for — years; and shall be re-eligible.

“He shall from time to time give information to the Legislature, of the state of the Union, and recommend to their consideration the measures he may think necessary. He shall take care that the laws of the United States be duly executed. He shall commission all the officers of the United States; and, except as to ambassadors, other ministers, and judges of the Supreme Court, he shall nominate, and, with the consent of the Senate, appoint, all other officers of the United States. He shall receive public ministers from foreign nations; and may correspond with the Executives of the different States.

He shall have power to grant pardons and reprieves, except in impeachments. He shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States; and shall receive a compensation which shall not be increased or diminished during his continuance in office. At entering on the duties of his office, he shall take an oath faithfully to execute the duties of a President of the United States. He shall be removed from his office on impeachment by the House of Delegates, and conviction in the Supreme Court, of treason, bribery, or corruption. In case of his removal, death, resignation, or disability, the President of the Senate shall exercise the duties of his office until another President be chosen. And in case of the death of the President of the Senate, the Speaker of the House of Delegates shall do so.

ARTICLE IX.

“The Legislature of the United States shall have the power, and it shall be their duty, to establish such courts of law, equity, and admiralty, as shall be necessary.

“The judges of the courts shall hold their offices during good behaviour; and receive a compensation, which shall not be increased or diminished during their continuance in office. One of these courts shall be termed the Supreme Court; whose jurisdiction shall extend to all cases arising under the laws of the United States, or affecting ambassadors, other public ministers and consuls; to the trial of impeachment of officers of the United States; to

all cases of admiralty and maritime jurisdiction. In cases of impeachment affecting ambassadors, and other public ministers, this jurisdiction shall be original; and in all other cases appellate.

“All criminal offences, except in cases of impeachment, shall be tried in the State where they shall be committed. The trials shall be open and public, and shall be by jury.

ARTICLE X.

“Immediately after the first census of the people of the United States, the House of Delegates shall apportion the Senate by electing for each State, out of the citizens resident therein, one Senator for every —— members each State shall have in the House of Delegates. Each State shall be entitled to have at least one member in the Senate.

ARTICLE XI.

“No State shall grant letters of marque and reprisal, or enter into treaty, or alliance, or confederation; nor grant any title of nobility; nor, without the consent of the Legislature of the United States, lay any impost on imports; nor keep troops or ships of war in time of peace; nor enter into compacts with other States or foreign powers; nor emit bills of credit; nor make any thing but gold, silver, or copper, a tender in payment of debts; nor engage in war, except for self-defence when actually invaded, or the danger of invasion be so great as not to admit of a delay until the Government of the

United States can be informed thereof. And to render these prohibitions effectual, the Legislature of the United States shall have the power to revise the laws of the several States that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do.

ARTICLE XII.

“The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. Any person, charged with crimes in any State, fleeing from justice to another, shall, on demand of the Executive of the State from which he fled, be delivered up, and removed to the State having jurisdiction of the offence.

ARTICLE XIII.

“Full faith shall be given, in each State, to the acts of the Legislature, and to the records and judicial proceedings of the courts and magistrates, of every State.

ARTICLE XIV.

“The Legislature shall have power to admit new States into the Union, on the same terms with the original States; provided two-thirds of the members present in both Houses agree.

ARTICLE XV.

“On the application of the Legislature of a State,
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the United States shall protect it against domestic insurrection.

ARTICLE XVI.

“If two-thirds of the Legislatures of the States apply for the same, the Legislature of the United States shall call a convention for the purpose of amending the Constitution; or, should Congress, with the consent of two-thirds of each House, propose to the States amendments to the same, the agreement of two-thirds of the Legislatures of the States shall be sufficient to make the said amendments parts of the Constitution.

“The ratification of the ——— conventions of ——— States shall be sufficient for organizing this Constitution.”

Ordered, that the said draft be referred to the Committee of the Whole appointed to consider the state of the American Union.

Adjourned.

WEDNESDAY, MAY 30TH.

ROGER SHERMAN, from Connecticut, took his seat.

The House went into *Committee of the Whole* on the state of the Union. Mr. GORHAM was elected to the Chair by ballot.

The propositions of Mr. RANDOLPH which had been referred to the Committee being taken up, he moved, on the suggestion of Mr. G. MORRIS, that the first of his

propositions,—to wit: “*Resolved, that the Articles of Confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution; namely, common defence, security of liberty, and general welfare,*”—should mutually be postponed, in order to consider the three following: ✓

“1. That a union of the States merely federal will not accomplish the objects proposed by the Articles of Confederation, namely, common defence, security of liberty, and general welfare.

“2. That no treaty or treaties among the whole or part of the States, as individual sovereignties, would be sufficient.

“3. That a *national* government ought to be established, consisting of a *supreme* Legislative, Executive and Judiciary.”

The motion for postponing was seconded by Mr. G. MORRIS, and unanimously agreed to.

Some verbal criticisms were raised against the first proposition, and it was agreed, on motion of Mr. BUTLER, seconded by Mr. RANDOLPH, to pass on to the third, which underwent a discussion, less, however, on its general merits than on the force and extent of the particular terms *national* and *supreme*.

Mr. CHARLES PINCKNEY wished to know of Mr. RANDOLPH, whether he meant to abolish the State governments altogether. Mr. RANDOLPH replied, that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

Mr. BUTLER said, he had not made up his mind on the subject, and was open to the light which discus-

sion might throw on it. After some general observations, he concluded with saying, that he had opposed the grant of powers to Congress heretofore, because the whole power was vested in one body. The proposed distribution of the powers with different bodies changed the case, and would induce him to go great lengths.

General PINCKNEY expressed a doubt whether the act of Congress recommending the Convention, or the commissions of the Deputies to it, would authorize a discussion of a system founded on different principles from the Federal Constitution.

Mr. GERRY seemed to entertain the same doubt.

Mr. GOUVERNEUR MORRIS explained the distinction between a *federal* and a *national, supreme* government; the former being a mere compact resting on the good faith of the parties; the latter having a complete and *compulsive* operation. He contended, that in all communities there must be one supreme power, and one only.

Mr. MASON observed, not only that the present Confederation was deficient in not providing for coercion and punishment against delinquent States; but argued very cogently, that punishment could not in the nature of things be executed on the States collectively, and therefore that such a government was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

Mr. SHERMAN admitted that the Confederation had not given sufficient power to Congress, and that additional powers were necessary; particularly that of raising money, which he said would involve many

other powers. He admitted also, that the general and particular jurisdictions ought in no case to be concurrent. He seemed, however, not to be disposed to make too great inroads on the existing system; intimating, as one reason, that it would be wrong to lose every amendment by inserting such as would not be agreed to by the States.

It was moved by Mr. READ, and seconded by Mr. CHARLES COTESWORTH PINCKNEY, to postpone the third proposition last offered by Mr. RANDOLPH, viz. "that a national government ought to be established, consisting of a supreme Legislative, Executive, and Judiciary," in order to take up the following, viz. "Resolved, that, in order to carry into execution the design of the States in forming this Convention, and to accomplish the objects proposed by the Confederation, a more effective government, consisting of a Legislative, Executive, and Judiciary, ought to be established." The motion to postpone for this purpose was lost:

Massachusetts, Connecticut, Delaware, South Carolina, aye—4; New York, Pennsylvania, Virginia, North Carolina, no—4.

On the question, as moved by Mr. BUTLER, on the third proposition, it was resolved, in Committee of Whole, "that a national government ought to be established, consisting of a supreme Legislative, Executive, and Judiciary,"—Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye—6; Connecticut, no—1; New York divided¹⁰ (Colonel HAMILTON, aye, Mr. YATES, no).

The following Resolution, being the second of

those proposed by Mr. RANDOLPH, was taken up, viz. *"that the rights of suffrage in the National Legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases."*

Mr. MADISON, observing that the words, *"or to the number of free inhabitants,"* might occasion debates which would divert the Committee from the general question whether the principle of representation should be changed, moved that they might be struck out.

Mr. KING observed, that the quotas of contribution, which would alone remain as the measure of representation, would not answer; because, waiving every other view of the matter, the revenue might hereafter be so collected by the General Government that the sums respectively drawn from the States would not appear, and would besides be continually varying.

Mr. MADISON admitted the propriety of the observation, and that some better rule ought to be found.

Colonel HAMILTON moved to alter the resolution so as to read, *"that the rights of suffrage in the National Legislature ought to be proportioned to the number of free inhabitants."* Mr. SPAIGHT seconded the motion.

It was then moved that the resolution be postponed; which was agreed to.

Mr. RANDOLPH and Mr. MADISON then moved the following resolution: *"that the rights of suffrage in the National Legislature ought to be proportioned."*

It was moved and seconded to amend it by adding, "and not according to the present system;" which was agreed to.

It was then moved and seconded to alter the resolution so as to read, "that the rights of suffrage in the National Legislature ought not to be according to the present system."

It was then moved and seconded to postpone the resolution moved by Mr. RANDOLPH and Mr. MADISON; which being agreed to,—

Mr. MADISON moved, in order to get over the difficulties, the following resolution: "that the equality of suffrage established by the Articles of Confederation ought not to prevail in the National Legislature; and that an equitable ratio of representation ought to be substituted." This was seconded by Mr. GOUVERNEUR MORRIS, and, being generally relished, would have been agreed to; when—

Mr. READ moved, that the whole clause relating to the point of representation be postponed; reminding the Committee that the Deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

Mr. GOUVERNEUR MORRIS observed, that the valuable assistance of those members could not be lost without real concern; and that so early a proof of discord in the Convention, as the secession of a State, would add much to the regret; that the change proposed was, however, so fundamental an article in a national government, that it could not be dispensed with.

Mr. MADISON observed, that, whatever reason might have existed for the equality of suffrage when the Union was a federal one among sovereign States, it must cease when a national government should be put into the place. In the former case, the acts of Congress depended so much for their efficacy on the co-operation of the States, that these had a weight, both within and without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the General Government would take effect without the intervention of the State Legislatures, a vote from a small State would have the same efficacy and importance as a vote from a large one, and there was the same reason for different numbers of representatives from different States, as from counties of different extents within particular States. He suggested as an expedient for at once taking the sense of the members on this point, and saving the Delaware Deputies from embarrassment, that the question should be taken in Committee, and the clause, on report to the House, be postponed without a question there. This, however, did not appear to satisfy Mr. READ.

By several it was observed, that no just construction of the act of Delaware could require or justify a secession of her Deputies, even if the resolution were to be carried through the House as well as the Committee. It was finally agreed, however, that the clause should be postponed; it being understood that, in the event, the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. READ to postpone being agreed to,—

The Committee then rose; the Chairman reported progress; and the House, having resolved to resume the subject in Committee to-morrow,—

Adjourned to ten o'clock.

THURSDAY, MAY 31ST.

WILLIAM PIERCE, from Georgia, took his seat.¹⁸¹

In the Committee of the Whole on Mr. RANDOLPH'S Resolutions,—The third Resolution, "*that the National Legislature ought to consist of two branches,*" was agreed to without debate, or dissent, except that of Pennsylvania,—given probably from complaisance to Doctor FRANKLIN, who was understood to be partial to a single house of legislation.

The fourth Resolution, first clause, "*that the members of the first branch of the National Legislature ought to be elected by the people of the several States,*" being taken up:

Mr. SHERMAN opposed the election by the people, insisting that it ought to be by the State Legislatures. The people, he said, immediately, should have as little to do as may be about the government. They want information, and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience, that they are daily misled into the most

baneful measures and opinions, by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the Governor, though secured by the spirit of the Constitution itself. He had, he said, been too republican heretofore: he was still, however, republican; but had been taught by experience the danger of the levelling spirit.

Mr. MASON argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community; and ought therefore to be taken, not only from different parts of the whole republic, but also from different districts of the larger members of it; which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, &c. &c. He admitted that we had been too democratic, but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering, that, however affluent their circumstances, or elevated their situations, might be, the course of a few years not only might, but cer-

tainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest, order of citizens.

Mr. WILSON contended strenuously for drawing the most numerous branch of the Legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government, this confidence was peculiarly essential. He also thought it wrong to increase the weight of the State Legislatures by making them the electors of the National Legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of States to Federal measures had proceeded much more from the officers of the States than from the people at large.

Mr. MADISON considered the popular election of one branch of the National Legislature as essential to every plan of free government. He observed, that in some of the States one branch of the Legislature was composed of men already removed from the people by an intervening body of electors. That if the first branch of the General Legislature should be elected by the State Legislatures, the second branch elected by the first, the Executive by the second together with the first, and other appoint-

ments again made for subordinate purposes by the Executive, the people would be lost sight of altogether ; and the necessary sympathy between them and their rulers and officers too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the Legislature, and in the Executive and Judiciary branches of the government. He thought, too, that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the Legislatures.

Mr. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience, he said, had shown that the State Legislatures, drawn immediately from the people, did not always possess their confidence. He had no objection, however, to an election by the people, if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number, out of which the State Legislatures should be bound to choose.

Mr. BUTLER thought an election by the people an impracticable mode.

On the question for an election of the first branch of the National Legislature, by the people, Massa-

chusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, aye—5; New Jersey, South Carolina, no—2; Connecticut, Delaware, divided.

The remaining clauses of the fourth Resolution, relating to *the qualifications of members of the National Legislature*, being postponed, *nem. con.*, as entering too much into detail for general propositions,—

The Committee proceeded to the fifth Resolution, *that the second [or senatorial] branch of the National Legislature ought to be chosen by the first branch, out of persons nominated by the State Legislatures.*

Mr. SPAIGHT contended, that the second branch ought to be chosen by the State Legislatures, and moved an amendment to that effect.

Mr. BUTLER apprehended that the taking so many powers out of the hands of the States as was proposed, tended to destroy all that balance and security of interests among the States which it was necessary to preserve; and called on Mr. RANDOLPH, the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.

Mr. RANDOLPH observed, that he had, at the time of offering his propositions, stated his ideas as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which

numerous assemblies are liable. He observed, that the general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for, against this tendency of our governments; and that a good Senate seemed most likely to answer the purpose.

Mr. KING reminded the Committee that the choice of the second branch as proposed, (by Mr. SPAIGHT) viz., by the State Legislatures, would be impracticable, unless it was to be very numerous, or *the idea of proportion* among the States was to be disregarded. According to this *idea*, there must be eighty or a hundred members to entitle Delaware to the choice of one of them.

Mr. SPAIGHT withdrew his motion.

Mr. WILSON opposed both a nomination by the State Legislatures, and an election by the first branch of the National Legislature, because the second branch of the latter ought to be independent of both. He thought both branches of the National Legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of choosing the Senate of New York, to wit, of uniting several election districts for one branch, in choosing members for the other branch, as a good model.

Mr. MADISON observed, that such a mode would destroy the influence of the smaller States associated with larger ones in the same district; as the latter would choose from within themselves, al-

though better men might be found in the former. The election of Senators in Virginia, where large and small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality would often prefer a resident within the county or State, to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own State.

Mr. SHERMAN favored an election of one member by each of the State Legislatures.

Mr. PINCKNEY moved to strike out the "nomination by the State Legislatures;" on this question—

* Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—9; Delaware, divided.

On the whole question for electing by the first branch out of nominations by the State Legislatures—Massachusetts, Virginia, South Carolina, aye—3; Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no—7.

So the clause was disagreed to, and a chasm left in this part of the plan.¹²⁸

The sixth Resolution, stating *the cases in which the National Legislature ought to legislate*, was next taken into discussion. On the question *whether each branch should originate laws*, there was an unanimous affirmative, without debate. On the question *for transferring all the legislative powers of the existing Congress to this assembly*, there was also an unanimous affirmative, without debate.

* This question is omitted in the printed Journal, and the votes applied to the succeeding one, instead of the votes as here stated.

On the proposition *for giving legislative power in all cases to which the State Legislatures were individually incompetent*,—Mr. PINCKNEY and Mr. RUTLEDGE objected to the vagueness of the term "*incompetent*," and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.

Mr. BUTLER repeated his fears that we were running into an extreme, in taking away the powers of the States; and called on Mr. RANDOLPH for the extent of his meaning.

Mr. RANDOLPH disclaimed any intention to give indefinite powers to the National Legislature, declaring that he was entirely opposed to such an inroad on the State jurisdictions; and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.

Mr. MADISON said, that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the National Legislature; but had also brought doubts concerning its practicability. His wishes remained unaltered; but his doubts had become stronger. What his opinion might ultimately be, he could not yet tell. But he should shrink from nothing which should be found essential to such a form of government as would provide for the safety, liberty and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.

On the question for giving powers, in cases to

which the States are not competent—Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—9; Connecticut, divided, (SHERMAN, no, ELLSWORTH, aye.)

The other clauses, *giving powers necessary to preserve harmony among the States, to negative all State laws contravening, in the opinion of the National Legislature, the Articles of Union*, down to the last clause, (the words, “or any treaties subsisting under the authority of the Union,” being added after the words “contravening, &c. the Articles of the Union,” on motion of Doctor Franklin) were agreed to without debate or dissent.

The last clause of the sixth Resolution, *authorizing an exertion of the force of the whole against a delinquent State*, came next into consideration.

Mr. MADISON observed, that the more he reflected on the use of force, the more he doubted the practicability, the justice and the efficacy of it, when applied to people collectively, and not individually. An union of the States containing such an ingredient seemed to provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment; and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary, and moved that the clause be postponed. This motion was agreed to, *nem. con.*

The Committee then rose, and the House adjourned.

FRIDAY, JUNE 1ST.

WILLIAM HOUSTOUN, from Georgia, took his seat.

The *Committee of the Whole* proceeded to the seventh Resolution, *that a National Executive be instituted, to be chosen by the National Legislature for the term of ——— years, &c., to be ineligible thereafter, to possess the Executive powers of Congress, &c.*

Mr. PINCKNEY was for a vigorous Executive, but was afraid the executive powers of the existing Congress might extend to peace and war, &c.; which would render the Executive a monarchy of the worst kind, to wit, an elective one.

Mr. WILSON moved that the Executive consist of a single person. Mr. C. PINCKNEY seconded the motion, so as to read "that a National Executive, to consist of a single person, be instituted."

A considerable pause ensuing, and the Chairman asking if he should put the question, Doctor FRANKLIN observed that it was a point of great importance, and wished that the gentlemen would deliver their sentiments on it before the question was put.

Mr. RUTLEDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded, by having frankly disclosed their opinions, from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the executive power in a single person, though he was not for giving him the power of war and peace. A single man would feel the greatest responsibility, and administer the public affairs best.

Mr. SHERMAN said, he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect; that the person or persons ought to be appointed by and accountable to the legislature only, which was the depository of the supreme will of the society. As they were the best judges of the business which ought to be done by the executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed, but that the legislature should be at liberty to appoint one or more as experience might dictate.

Mr. WILSON preferred a single magistrate, as giving most energy, dispatch and responsibility to the office. He did not consider the prerogatives of the British monarch as a proper guide in defining the executive powers. Some of these prerogatives were of a legislative nature; among others, that of war and peace, &c. The only powers he considered strictly executive were those of executing the laws, and appointing officers, not appertaining to, and appointed by, the legislature.

Mr. GERRY favored the policy of annexing a council to the Executive, in order to give weight and inspire confidence.

Mr. RANDOLPH strenuously opposed an unity in the executive magistracy. He regarded it as the fœtus of monarchy. We had, he said, no motive to be governed by the British government as our prototype. He did not mean, however, to throw censure on that excellent fabric. If we were in a situation to copy it, he did not know that he should be opposed to it; but the fixed genius of the people of

America required a different form of government. He could not see why the great requisites for the executive department, vigor, dispatch, and responsibility, could not be found in three men, as well as in one man. The Executive ought to be independent. It ought, therefore, in order to support its independence, to consist of more than one.

Mr. WILSON said, that unity in the Executive, instead of being the foetus of monarchy, would be the best safeguard against tyranny. He repeated, that he was not governed by the British model, which was inapplicable to the situation of this country; the extent of which was so great, and the manners so republican, that nothing but a great confederated republic would do for it.

Mr. WILSON's motion for a single magistrate was postponed by common consent, the Committee seeming unprepared for any decision on it; and the first part of the clause agreed to, viz. "that a national Executive be instituted."¹⁰⁴

Mr. MADISON thought it would be proper, before a choice should be made between a unity and a plurality in the Executive, to fix the extent of the executive authority; that as certain powers were in their nature executive, and must be given to that department, whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely entrusted to a single officer. He accordingly moved that so much of the clause before the Committee as related to the powers of the Executive should be struck out, and that after the words "that a national Executive ought to be instituted," there

be inserted the words following, viz. "with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers, 'not legislative nor judiciary in their nature,' as may from time to time be delegated by the national Legislature." The words "not legislative nor judiciary in their nature," were added to the proposed amendment, in consequence of a suggestion, by General PINCKNEY, that improper powers might otherwise be delegated.

Mr. WILSON seconded this motion.

Mr. PINCKNEY moved to amend the amendment by striking out the last member of it, viz. "and to execute such other powers, not legislative nor judiciary in their nature, as may from time to time be delegated." He said they were unnecessary, the object of them being included in the "power to carry into effect the national laws."

Mr. RANDOLPH seconded the motion.

Mr. MADISON did not know that the words were absolutely necessary, or even the preceding words, "to appoint to offices, &c.," the whole being, perhaps, included in the first member of the proposition. He did not, however, see any inconvenience in retaining them; and cases might happen in which they might serve to prevent doubts and misconstructions.

In consequence of the motion of Mr. PINCKNEY, the question on Mr. MADISON's motion was divided; and the words objected to by Mr. PINCKNEY struck out, by the votes of Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, and Georgia—7, against Massachusetts, Virginia,

and South Carolina—3; the preceding part of the motion being first agreed to,—Connecticut, divided; all the other States in the affirmative.

The next clause in the seventh Resolution, relating to the mode of appointing, and the duration of, the Executive, being under consideration,—

Mr. WILSON said, he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say, however, at least, that in theory he was for an election by the people. Experience, particularly in New York and Massachusetts, showed that an election of the first magistrate by the people at large was both a convenient and successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

Mr. SHERMAN was for the appointment by the Legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the Executive on the supreme Legislature, was, in his opinion, the very essence of tyranny, if there was any such thing.

Mr. WILSON moved, that the blank for the term of duration should be filled with three years, observing, at the same time, that he preferred this short period on the supposition that a re-eligibility would be provided for.

Mr. PINCKNEY moved, for seven years.

Mr. SHERMAN was for three years, and against the doctrine of rotation, as throwing out of office the men best qualified to execute its duties.

Mr. MASON was for seven years at least, and for

prohibiting a re-eligibility, as the best expedient, both for preventing the effect of a false complaisance on the side of the Legislature towards unfit characters; and a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment.

Mr. BEDFORD was strongly opposed to so long a term as seven years. He begged the Committee to consider what the situation of the country would be, in case the first magistrate should be saddled on it for such a period, and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment, he said, would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

On the question, *for seven years*,—New York, New Jersey, Pennsylvania, Delaware, Virginia, aye—5; Connecticut, North Carolina, South Carolina, Georgia, no 4; Massachusetts, divided. There being five ayes, four noes, and one divided, a question was asked, whether a majority had voted in the affirmative. The President decided that it was an affirmative vote.¹⁸⁵

The *mode of appointing* the Executive was the next question.

Mr. WILSON renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the Legislature from the people without the intervention of the State Legislatures, but the Executive also, in order to make them as independent as possible of each other, as well as of the States.

Colonel MASON favors the idea, but thinks it impracticable. He wishes, however, that Mr. WILSON might have time to digest it into his own form. The clause, "to be chosen by the National Legislature," was accordingly postponed.

Mr. RUTLEDGE suggests an election of the Executive by the second branch only of the National Legislature.

The Committee then rose, and the House adjourned.

SATURDAY, JUNE 2ND.

WILLIAM SAMUEL JOHNSON, from Connecticut, DANIEL OF ST. THOMAS JENIFER, from Maryland, and JOHN LANSING, Jun., from New York, took their seats.

In Committee of the Whole.—It was moved and seconded to postpone the Resolutions of Mr. RANDOLPH respecting the Executive, in order to take up the second branch of the Legislature; which being negatived,—by Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia—7; against New York, Pennsylvania, Maryland—3; the mode of appointing the Executive was resumed.

Mr. WILSON made the following motion, to be substituted for the mode proposed by Mr. RANDOLPH's Resolution, "that the executive magistracy shall be elected in the following manner: That the States be divided into ——— districts and that the

persons qualified to vote in each district for members of the first branch of the National Legislature elect ——— members for their respective districts to be electors of the executive magistracy; that the said electors of the executive magistracy meet at ———, and they, or any ——— of them, so met, shall proceed to elect by ballot, but not out of their own body, ——— person— in whom the executive authority of the National Government shall be vested.”

Mr. WILSON repeated his arguments in favor of an election without the intervention of the States. He supposed, too, that this mode would produce more confidence among the people in the first magistrate, than an election by the National Legislature.

Mr. GERRY opposed the election by the National Legislature. There would be a constant intrigue kept up for the appointment. The Legislature and the candidates would bargain and play into one another's hands. Votes would be given by the former under promises or expectations from the latter, of recompensing them by services to members of the Legislature or their friends. He liked the principle of Mr. WILSON's motion, but fears it would alarm and give a handle to the State partizans, as tending to supersede altogether the State authorities. He thought the community not yet ripe for stripping the States of their powers, even such as might not be requisite for local purposes. He was for waiting till the people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the States, instead of electors; or

letting the Legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.

Mr. WILLIAMSON could see no advantage in the introduction of electors chosen by the people, who would stand in the same relation to them as the State Legislatures; whilst the expedient would be attended with great trouble and expense.

On the question for agreeing to Mr. WILSON's substitute, it was negatived,—Pennsylvania, Maryland, aye—2; Massachusetts, Connecticut, New York,* Delaware, Virginia, North Carolina, South Carolina, Georgia, no—8.¹⁰⁰

On the question, for electing the Executive by the National Legislature, for the term of seven years, it was agreed to,—Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—8; Pennsylvania, Maryland, no—2.

Doctor FRANKLIN moved, that what related to the compensation for the services of the Executive be postponed, in order to substitute, "whose necessary expenses shall be defrayed, but who shall receive no salary, stipend, fee, or reward whatsoever for their services." He said, that, being very sensible of the effect of age on his memory, he had been unwilling to trust to that for the observations which seemed to support his motion, and had reduced

* New York, in the printed Journal, divided.

them to writing, that he might, with the permission of the Committee, read, instead of speaking, them. Mr. WILSON made an offer to read the paper, which was accepted. The following is a literal copy of the paper :

“ Sir, it is with reluctance that I rise to express a disapprobation of any one article of the plan for which we are so much obliged to the honorable gentleman who laid it before us. From its first reading I have borne a good will to it, and in general wished it success. In this particular of salaries to the Executive branch, I happen to differ: and as my opinion may appear new and chimerical, it is only from a persuasion that it is right, and from a sense of duty, that I hazard it. The Committee will judge of my reasons when they have heard them, and their judgment may possibly change mine. I think I see inconveniences in the appointment of salaries; I see none in refusing them, but, on the contrary, great advantages.

“ Sir, there are two passions which have a powerful influence on the affairs of men. There are ambition and avarice; the love of power, and the love of money. Separately, each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of *honor*, that shall be at the same time a place of *profit*, and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British government so tempestuous. The struggles for them are the true sources of all those factions, which are perpetually

dividing the nation, distracting its councils, hurrying sometimes into fruitless and mischievous wars, and often compelling a submission to dishonorable terms of peace.

“And of what kind are the men that will strive for this profitable pre-eminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your government, and be your rulers. And these, too, will be mistaken in the expected happiness of their situation: for their vanquished competitors, of the same spirit, and from the same motives, will perpetually be endeavouring to distress their administration, thwart their measures, and render them odious to the people.

“Besides these evils, Sir, though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers, that the rulers may be able in return to give more to them. Hence, as all history informs us, there has been in every state and kingdom a constant kind of warfare between the governing and governed, the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the

princes, or enslaving of the people. Generally, indeed, the ruling power carries its point, the revenues of princes constantly increasing; and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes, the greater need the prince has of money to distribute among his partizans, and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in an hundred, who would not, if he could, follow the example of Pharaoh, get first all the people's money, then all their lands, and then make them and their children servants for ever. It will be said, that we don't propose to establish kings. I know it: but there is a natural inclination in mankind to kingly government. It sometimes relieves them from aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among citizens, and that they like. I am apprehensive, therefore, perhaps too apprehensive, that the government of these States may in future times end in a monarchy. But this catastrophe I think may be long delayed, if in our proposed system we do not sow the seeds of contention, faction, and tumult, by making our posts of honor, places of profit. If we do, I fear that, though we do employ at first a number, and not a single person, the number will in time be set aside; it will only nourish the foetus of a king, as the honorable gentleman from Virginia very aptly expressed it, and a king will the sooner be set over us.

“It may be imagined by some that this is an Utopian idea, and that we can never find men to serve

us in the Executive department without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me, which incline me to a contrary opinion. The high-sheriff of a county in England is an honorable office, but it is not a profitable one. It is rather expensive and therefore not sought for. But yet, it is executed and well executed, and usually by some of the principal gentlemen of the county. In France, the office of Counsellor, or member of their judiciary parliament, is more honorable. It is therefore purchased at a high price: there are indeed fees on the law proceedings, which are divided among them, but these fees do not amount to more than three per cent on the sum paid for the place. Therefore, as legal interest is there at five per cent, they in fact pay two per cent for being allowed to do the judiciary business of the nation, which is at the same time entirely exempt from the burden of paying them any salaries for their services. I do not, however, mean to recommend this as an eligible mode for our Judiciary department. I only bring the instance to show, that the pleasure of doing good and serving their country, and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction.

“Another instance is that of a respectable society who have made the experiment, and practised it with success more than one hundred years. I mean the Quakers. It is an established rule with them, that they are not to go to law; but in their contro-

versies they must apply to their monthly, quarterly, and yearly meetings. Committees of these sit with patience to hear the parties, and spend much time in composing their differences. In doing this, they are supported by a sense of duty, and the respect paid to usefulness. It is honorable to be so employed, but it is never made profitable by salaries, fees or perquisites. And, indeed, in all cases of public service, the less the profit the greater the honor.

“To bring the matter nearer home, have we not seen the great and most important of our offices, that of General of our armies, executed for eight years together without the smallest salary, by a patriot whom I will not now offend by any other praise; and this, through fatigues and distresses, in common with the other brave men, his military friends and companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men in all the United States, with public spirit enough to bear sitting in peaceful council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed? Sir, I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question.

“Sir, the saving of the salaries that may at first be proposed is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is, that I move the amendment. If it is not seconded or accepted, I must be contented with the satisfaction of having delivered my opinion frankly and done my duty.”

The motion was seconded by Col. HAMILTON, with the view, he said, merely of bringing so respectable a proposition before the Committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect, but rather for the author of it, than from any apparent conviction of its expediency or practicability.¹⁸⁷

Mr. DICKINSON moved, "that the Executive be made removable by the National Legislature, on the request of a majority of the Legislatures of individual States." It was necessary, he said, to place the power of removing somewhere. He did not like the plan of impeaching the great officers of state. He did not know how provision could be made for removal of them in a better mode than that which he had proposed. He had no idea of abolishing the State governments, as some gentlemen seemed inclined to do. The happiness of this country, in his opinion, required considerable powers to be left in the hands of the States.

Mr. BEDFORD seconded the motion.

Mr. SHERMAN contended, that the National Legislature should have power to remove the Executive at pleasure.

Mr. MASON. Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the Executive the mere creature of the Legislature, as a violation of the fundamental principle of good government.

Mr. MADISON and Mr. WILSON observed, that it would leave an equality of agency in the small with the great States; that it would enable a minority of the people to prevent the removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues against him in States where his administration, though just, might be unpopular; and might tempt him to pay court to particular States whose leading partizans he might fear, or wish to engage as his partizans. They both thought it bad policy to introduce such a mixture of the State authorities, where their agency could be otherwise supplied.

Mr. DICKINSON considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the Legislative, Executive and Judiciary departments ought to be made as independent as possible; but that such an Executive as some seemed to have in contemplation was not consistent with a republic; that a firm Executive could only exist in a limited monarchy. In the British government itself the weight of the Executive arises from the attachments which the Crown draws to itself, and not merely from the force of its prerogatives. In place of these attachments we must look out for something else. One source of stability is the double branch of the Legislature. The division of the country into distinct States formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the States. This was the ground of his consolation for the future fate of his

country. Without this, and in case of a consolidation of the States into one great republic, we might read its fate in the history of smaller ones. A limited monarchy he considered as *one* of the best governments in the world. It was not *certain* that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican forms. A limited monarchy, however, was out of the question. The spirit of the times, the state of our affairs forbade the experiment, if it were desirable. Was it possible, moreover, in the nature of things, to introduce it even if these obstacles were less insuperable? A house of nobles was essential to such a government,—could these be created by a breath, or by a stroke of the pen? No. They were the growth of ages, and could only arise under a complication of circumstances none of which existed in this country. But though a form the most perfect, *perhaps*, in itself, be unattainable, we must not despair. If ancient republics have been found to flourish for a moment only, and then vanish forever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this country into distinct States; a division which some seemed desirous to abolish altogether.

As to the point of representation in the National Legislature, as it might affect States of different sizes, he said it must probably end in mutual concession. He hoped that each State would retain an equal voice at least in one branch of the National

Legislature, and supposed the sums paid within each State would form a better ratio for the other branch than either the number of inhabitants or the quantum of property.

A motion being made to strike out, "on request by a majority of the Legislatures of the individual States," and rejected—(Connecticut, South Carolina and Georgia, being aye; the rest, no,) the question was taken on Mr. DICKINSON's motion, "for making the Executive removable by the National Legislature at the request of a majority of State Legislatures," which was also rejected,—all the States being in the negative, except Delaware, which gave an affirmative vote.¹²⁸

The question for making the Executive *ineligible after seven years*, was next taken and agreed to,—Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye—7; Connecticut, Georgia,* no—2; Pennsylvania, divided.

Mr. WILLIAMSON, seconded by Mr. DAVIE, moved to add to the last clause the words, "and to be removable on impeachment and conviction of malpractice or neglect of duty;" which was agreed to.

Mr. RUTLEDGE and Mr. C. PINCKNEY moved, that the blank for the number of persons in the Executive be filled with the words, "one person." He supposed the reasons to be so obvious and conclusive in favor of one, that no member would oppose the motion.

Mr. RANDOLPH opposed it with great earnestness, declaring that he should not do justice to the country which sent him, if he were silently to suffer the

* In the printed Journal, Georgia, aye.

establishment of a unity in the Executive department. He felt an opposition to it which he believed he should continue to feel as long as he lived. He urged—first, that the permanent temper of the people was adverse to the very semblance of monarchy; secondly, that a unity was unnecessary, a plurality being equally competent to all the objects of the department; thirdly, that the necessary confidence would never be reposed in a single magistrate; fourthly, that the appointments would generally be in favor of some inhabitant near the centre of the community, and consequently the remote parts would not be on an equal footing. He was in favor of three members of the Executive, to be drawn from different portions of the country.

Mr. BUTLER contended strongly for a single magistrate, as most likely to answer the purpose of the remote parts. If one man should be appointed, he would be responsible to the whole, and would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. In military matters this would be particularly mischievous. He said, his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a *plurality of military heads* distracted Holland, when threatened with invasion by the imperial troops. One man was for directing the force to the defence of this part, another to that part of the country, just as he happened to be swayed by prejudice or interest.

The motion was then postponed; the Committee rose; and the House adjourned.

MONDAY, JUNE 4TH.

In Committee of the Whole.—The question was resumed, on motion of Mr. PINCKNEY, seconded by Mr. WILSON, 'shall the blank for the number of the Executive be filled with a single person ?'

Mr. WILSON was in favor of the motion. It had been opposed by the gentleman from Virginia (Mr. RANDOLPH); but the arguments used had not convinced him. He observed, that the objections of Mr. RANDOLPH were levelled not so much against the measure itself, as against its unpopularity. If he could suppose that it would occasion a rejection of the plan of which it should form a part, though the part were an important one, yet he would give it up rather than lose the whole. On examination, he could see no evidence of the alleged antipathy of the people. On the contrary, he was persuaded that it does not exist. All know that a single magistrate is not a king. One fact has great weight with him. All the thirteen States, though agreeing in scarce any other instance, agree in placing a single magistrate at the head of the government. The idea of three heads has taken place in none. The degree of power is, indeed, different; but there are no co-ordinate heads. In addition to his former reasons for preferring a unity, he would mention another. The *tranquillity*, not less than the vigor, of the government, he thought, would be favored by it. Among three equal members, he foresaw nothing but uncontrolled, continued, and violent animosities; which would not only interrupt the

public administration, but diffuse their poison through the other branches of government, through the states, and at length through the people at large. If the members were to be unequal in power, the principle of opposition to the unity was given up. If equal, the making them an odd number would not be a remedy. In courts of justice there are two sides only to a question. In the legislative and executive departments, questions have commonly many sides. Each member, therefore, might espouse a separate one, and no two agree.

Mr. SHERMAN. This matter is of great importance, and ought to be well considered before it is determined. Mr. WILSON, he said, had observed that in each State a single magistrate was placed at the head of the government. It was so, he admitted, and properly so; and he wished the same policy to prevail in the Federal Government. But then it should be also remarked, that in all the States there was a council of advice, without which the first magistrate could not act. A council he thought necessary to make the establishment acceptable to the people. Even in Great Britain, the King has a council; and though he appoints it himself, its advice has its weight with him, and attracts the confidence of the people.

Mr. WILLIAMSON asks Mr. WILSON, whether he means to annex a Council.

Mr. WILSON means to have no Council, which oftener serves to cover, than prevent malpractices.

Mr. GERRY was at a loss to discover the policy of three members for the Executive. It would be extremely inconvenient in many instances, particularly

in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads.

On the question for a single Executive, it was agreed to,—Massachusetts, Connecticut, Pennsylvania, Virginia, (Mr. RANDOLPH and Mr. BLAIR, no; Doctor McCLURG, Mr. MADISON, and General WASHINGTON, aye; Colonel MASON being no, but not in the House, Mr. WYTHE, aye, but gone home), North Carolina, South Carolina, Georgia, aye—7; New York, Delaware, Maryland, no—3.¹⁰⁰

The first clause of the eighth Resolution, relating to a *council of revision*, was next taken into consideration.

Mr. GERRY doubts whether the Judiciary ought to form a part of it, as they will have a sufficient check against encroachments on their own department by their exposition of the laws, which involved a power of deciding on their constitutionality. In some States the judges had actually set aside laws, as being against the Constitution. This was done, too, with general approbation. It was quite foreign from the nature of their office to make them judges of the policy of public measures. He moves to postpone the clause, in order to propose, "that the National Executive shall have a right to negative any legislative act, which shall not be afterwards passed by ——— parts of each branch of the National Legislature."

Mr. KING seconded the motion, observing that the judges ought to be able to expound the law, as it should come before them, free from the bias of having participated in its formation.

Mr. WILSON thinks neither the original proposition nor the amendment goes far enough. If the Legislative, Executive, and Judiciary ought to be distinct and independent, the Executive ought to have an absolute negative. Without such a self-defence, the Legislature can at any moment sink it into non-existence. He was for varying the proposition, in such a manner as to give the Executive and Judiciary jointly an absolute negative.

On the question to postpone, in order to take Mr. GERRY's proposition into consideration, it was agreed to,—Massachusetts, New York, Pennsylvania, North Carolina, South Carolina, Georgia, aye—6; Connecticut, Delaware, Maryland, Virginia, no—4.

Mr. GERRY's proposition being now before the Committee, Mr. WILSON and Mr. HAMILTON move, that the last part of it (viz. "which shall not be afterwards passed by ——— parts of each branch of the National Legislature"), be struck out, so as to give the Executive an absolute negative on the laws. There was no danger, they thought, of such a power being too much exercised. It was mentioned by Colonel HAMILTON that the King of Great Britain had not exerted his negative since the Revolution.

Mr. GERRY sees no necessity for so great a control over the Legislature, as the best men in the community would be comprised in the two branches of it.

Doctor FRANKLIN said he was sorry to differ from his colleague, for whom he had a very great respect, on any occasion, but he could not help it on this. He had had some experience of this check in the Executive on the Legislature, under the proprietary

government of Pennsylvania. The negative of the Governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice, to have orders in his favor on the Treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people, and notice of it arrived, the concurrence of the Governor in the means of self-defence could not be got, till it was agreed that his estate should be exempted from taxation: so that the people were to fight for the security of his property, whilst he was to bear no share of the burden. This was a mischievous sort of check. If the Executive was to have a Council, such a power would be less objectionable. It was true, the King of Great Britain had not, as was said, exerted his negative since the Revolution; but that matter was easily explained. The bribes and emoluments now given to the members of parliament rendered it unnecessary, every thing being done according to the will of the ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last enough would be got to influence and bribe the Legislature into a complete subjection to the will of the Executive.

Mr. SHERMAN was against enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He

thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the Legislature.

Mr. MADISON supposed, that, if a proper proportion of each branch should be required to overrule the objections of the Executive, it would answer the same purpose as an absolute negative. It would rarely, if ever, happen that the Executive, constituted as ours is proposed to be, would have firmness enough to resist the Legislature, unless backed by a certain part of the body itself. The King of Great Britain, with all his splendid attributes, would not be able to withstand the unanimous and eager wishes of both Houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this country,—its present temper at least.

Mr. WILSON believed, as others did, that this power would seldom be used. The Legislature would know that such a power existed, and would refrain from such laws as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Pennsylvania formerly was very different from its present case. The Executive was not then, as now to be, appointed by the people. It will not in this case, as in the one cited, be supported by the head of a great empire, actuated by a different and sometimes opposite interest. The salary, too, is now proposed to be fixed by the Constitution, or, if Doctor Franklin's idea should be adopted, all salary whatever interdicted. The requiring a large proportion of each House to overrule the Executive check, might do in peaceable times; but there might be tempestuous

moments in which animosities may run high between the Executive and Legislative branches, and in which the former ought to be able to defend itself.

Mr. BUTLER had been in favor of a single executive magistrate; but could he have entertained an idea that a complete negative on the laws was to be given him, he certainly should have acted very differently. It had been observed, that in all countries the executive power is in a constant course of increase. This was certainly the case in Great Britain. Gentlemen seemed to think that we had nothing to apprehend from an abuse of the executive power. But why might not a Cataline or a Cromwell arise in this country as well as in others?

Mr. BEDFORD was opposed to every check on the Legislature, even the council of revision first proposed. He thought it would be sufficient to mark out in the constitution the boundaries to the legislative authority, which would give all the requisite security to the rights of the other departments. The representatives of the people were the best judges of what was for their interest, and ought to be under no external control whatever. The two branches would produce a sufficient control within the Legislature itself.

Col. MASON observed that a vote had already passed, he found—he was out at the time—for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by Doctor FRANKLIN, as proved by experience, the best of all tests. Will

not the same door be opened here? The Executive may refuse its assent to necessary measures, till new appointments shall be referred to him; and, having by degrees engrossed all these into his own hands, the American Executive, like the British, will, by bribery and influence, save himself the trouble and odium of exerting his negative afterwards. We are, Mr. Chairman, going very far in this business. We are not indeed constituting a British government, but a more dangerous monarchy, an elective one. We are introducing a new principle into our system, and not necessary, as in the British government, where the Executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do, I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment, but forever, of the plan which shall be proposed to them? Notwithstanding the oppression and injustice experienced among us from democracy, the genius of the people is in favor of it; and the genius of the people must be consulted. He could not but consider the Federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between extinction of an old, and the establishment of a new, government; and to the scenes of confusion which may ensue? He hoped that nothing like a monarchy would ever be attempted in this country. A hatred to its oppressions had carried the people

through the late Revolution. Will it not be enough to enable the Executive to suspend offensive laws, till they shall be coolly revised, and the objections to them overruled by a greater majority than was required in the first instance? He never could agree to give up all the rights of the people to a single magistrate. If more than one had been fixed on, greater powers might have been entrusted to the Executive. He hoped this attempt to give such powers would have its weight hereafter, as an argument for increasing the number of the Executive.

Doctor FRANKLIN. A gentleman from South Carolina, (Mr. BUTLER) a day or two ago called our attention to the case of the United Netherlands. He wished the gentleman had been a little fuller, and had gone back to the original of that government. The people being under great obligations to the Prince of Orange, whose wisdom and bravery had saved them, chose him for the Stadtholder. He did very well. Inconveniences, however, were felt from his powers; which growing more and more oppressive, they were at length set aside. Still, however, there was a party for the Prince of Orange, which descended to his son; who excited insurrections, spilled a great deal of blood, murdered the De Witts, and got the powers re-vested in the Stadtholder. Afterwards another prince had power to excite insurrections, and make the Stadtholdership hereditary. And the present Stadtholder is ready to wade through a bloody civil war to the establishment of a monarchy. Col. MASON had mentioned the circumstance of appointing officers. He knew how that point would be managed. No new ap-

pointment would be suffered, as heretofore in Pennsylvania, unless it be referred to the Executive; so that all profitable offices will be at his disposal. The first man put at the helm will be a good one. Nobody knows what sort may come afterwards. The Executive will be always increasing here, as elsewhere, till it ends in a monarchy.

On the question for striking out, so as to give the Executive an absolute negative,—Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—10.¹⁰

Mr. BUTLER moved that the Resolution be altered so as to read, "Resolved, that the national Executive have a power to suspend any legislative act for the term of ———."

Doctor FRANKLIN seconded the motion.

Mr. GERRY observed, that the power of suspending might do all the mischief dreaded from the negative of useful laws, without answering the salutary purpose of checking unjust or unwise ones.

On the question for giving this suspending power, all the States, to wit, Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, were, *no*.

On a question for enabling *two-thirds* of each branch of the Legislature to overrule the provisionary check, it passed in the affirmative, *sub silentio*; and was inserted in the blank of Mr. GERRY's motion.

On the question on Mr. GERRY's motion, which gave the Executive alone, without the Judiciary,

the revisionary control on the laws, unless overruled by two-thirds of each branch,—Massachusetts, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—8; Connecticut, Maryland, no—2.

It was moved by Mr. WILSON, seconded by Mr. MADISON, that the following amendment be made to the last Resolution: after the words “national Executive,” to add “and a convenient number of the national Judiciary.”

An objection of order being taken by Mr. HAMILTON to the introduction of the last amendment at this time, notice was given by Mr. WILSON and Mr. MADISON, that the same would be moved to-morrow; whereupon Wednesday was assigned to reconsider the amendment of Mr. GERRY.

It was then moved and seconded to proceed to the consideration of the ninth Resolution submitted by Mr. RANDOLPH; when, on motion to agree to the first clause, namely, “*Resolved, that a national Judiciary be established,*” it passed in the affirmative, *nem. con.*

It was then moved and seconded, to add these words to the first clause of the ninth Resolution, namely, “to consist of one supreme tribunal, and of one or more inferior tribunals;” which passed in the affirmative.^m

The Committee then rose, and the House adjourned.

TUESDAY, JUNE 5TH.

Governor LIVINGSTON, of New Jersey, took his seat.

In Committee of the Whole.—The words “one or more” were struck out before “inferior tribunals,” as an amendment to the last clause of the ninth Resolution. The clause, “that the national Judiciary be chosen by the National Legislature,” being under consideration.

Mr. WILSON opposed the appointment of Judges by the National Legislature. Experience showed the impropriety of such appointments by numerous bodies. Intrigue, partiality, and concealment were the necessary consequences. A principal reason for unity in the Executive was, that officers might be appointed by a single, responsible person.

Mr. RUTLEDGE was by no means disposed to grant so great a power to any single person. The people will think we are leaning too much towards monarchy. He was against establishing any national tribunal, except a single supreme one. The State tribunals are most proper to decide in all cases in the first instance.

Doctor FRANKLIN observed, that two modes of choosing the Judges had been mentioned, to wit, by the Legislature, and by the Executive. He wished such other modes to be suggested as might occur to other gentlemen; it being a point of great moment. He would mention one which he had understood was practised in Scotland. He then, in a brief and entertaining manner, related a Scotch mode, in which the nomination proceeded from the lawyers, who

always selected the ablest of the profession, in order to get rid of him, and share his practice among themselves. It was here, he said, the interest of the electors to make the best choice, which should always be made the case if possible.

Mr. MADISON disliked the election of the Judges by the Legislature, or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The legislative talents, which were very different from those of a Judge, commonly recommended men to the favor of legislative assemblies. It was known, too, that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment. On the other hand, he was not satisfied with referring the appointment to the Executive. He rather inclined to give it to the Senatorial branch, as numerous enough to be confided in; as not so numerous as to be governed by the motives of the other branch; and as being sufficiently stable and independent to follow their deliberate judgments. He hinted this only, and moved that the *appointment by the Legislature* might be struck out, and a blank left, to be hereafter filled on maturer reflection. Mr. WILSON seconds it. On the question for striking out,—Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—9; Connecticut, South Carolina, no —2.¹⁰²

Mr. WILSON gave notice that he should at a future day move for a reconsideration of that clause which respects inferior tribunals."

Mr. PINCKNEY gave notice, that when the clause respecting the appointment of the Judiciary should again come before the Committee, he should move to restore the "appointment by the National Legislature."

The following clauses of the ninth Resolution were agreed to, viz., "*to hold their offices during good behaviour, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution.*"

The remaining clause of the ninth Resolution was postponed.

The tenth Resolution was agreed to, viz., "*that provision ought to be made for the admission of States, lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.*"

The eleventh Resolution *for guaranteeing to States republican government and territory, &c.*, being read,—

Mr. PATTERSON wished the point of representation could be decided before this clause should be considered, and moved to postpone it; which was not opposed, and agreed to,—Connecticut and South Carolina only voting against it.

The twelfth Resolution, *for continuing Congress till a given day, and for fulfilling their engagements*, produced no debate.

On the question, Massachusetts, New York,

New Jersey,* Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—8; Connecticut, Delaware, no—2.

The thirteenth Resolution, to the effect *that provision ought to be made for hereafter amending the system now to be established, without requiring the assent of the National Legislature*, being taken up,—

Mr. PINCKNEY doubted the propriety or necessity of it.

Mr. GERRY favored it. The novelty and difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the government. Nothing had yet happened in the States where this provision existed to prove its impropriety.—The proposition was postponed for further consideration; the votes being,—Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, North Carolina, aye—7; Virginia, South Carolina, Georgia, no—3.

The fourteenth Resolution, *requiring oath from the State officers to support the National Government*,—was postponed, after a short, uninteresting conversation; the votes,—Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, aye—6; New York, Pennsylvania, Delaware, North Carolina, no—4; Massachusetts, divided.

The fifteenth Resolution, for *recommending conventions under appointment of the people to ratify the new Constitution, &c.*, being taken up,—

* New Jersey omitted in the printed Journal.

Mr. SHERMAN thought such a popular ratification unnecessary; the Articles of Confederation providing for changes and alterations, with the assent of Congress, and ratification of State Legislatures.

Mr. MADISON thought this provision essential. The Articles of Confederation themselves were defective in this respect, resting, in many of the States, on the legislative sanction only. Hence, in conflicts between acts of the States and of Congress, especially where the former are of posterior date, and the decision is to be made by State tribunals, an uncertainty must necessarily prevail; or rather perhaps a certain decision in favor of the State authority. He suggested also, that, as far as the Articles of Union were to be considered as a treaty only, of a particular sort, among the governments of independent states, the doctrine might be set up that a breach of any one Article, by any of the parties, absolved the other parties from the whole obligation. For these reasons, as well as others, he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves.

Mr. GERRY observed, that in the Eastern States the Confederation had been sanctioned by the people themselves. He seemed afraid of referring the new system to them. The people in that quarter have at this time the wildest ideas of government in the world. They were for abolishing the Senate in Massachusetts, and giving all the other powers of government to the other branch of the Legislature.

Mr. KING supposed, that the last Article of the

Confederation rendered the Legislature competent to the ratification. The people of the Southern States, where the Federal Articles had been ratified by the Legislatures only, had since, *impliedly*, given their sanction to it. He thought, notwithstanding, that there might be policy in varying the mode. A convention being a single house, the adoption may more easily be carried through it, than through the Legislatures, where there are several branches. The Legislatures also, being to lose power, will be most likely to raise objections. The people having already parted with the necessary powers, it is immaterial to them, by which government they are possessed, provided they be well employed.

Mr. WILSON took this occasion to lead the Committee, by a train of observations, to the idea of not suffering a disposition in the plurality of States, to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few States. He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest.*

Mr. PINCKNEY hoped, that, in case the experiment should not unanimously take place, nine States might be authorized to unite under the same government.

The fifteenth Resolution was postponed, *nem. con.*¹⁸

Mr. PINCKNEY and Mr. RUTLEDGE moved, that

* This hint was probably meant *in terrorem* to the smaller States of New Jersey and Delaware. Nothing was said in reply to it.

to-morrow be assigned to reconsider that clause of the fourth Resolution which respects the election of the first branch of the National Legislature; which passed in the affirmative,—Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, aye—6; Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no—5.

Mr. RUTLEDGE having obtained a rule for reconsideration of the clause for establishing *inferior* tribunals under the national authority, now moved that that part of the clause in the ninth Resolution should be expunged; arguing, that the State tribunals might and ought to be left in all cases to decide in the first instance, the right of appeal to the supreme national tribunal being sufficient to secure the national rights and uniformity of judgments; that it was making an unnecessary encroachment on the jurisdiction of the States, and creating unnecessary obstacles to their adoption of the new system.

Mr. SHERMAN seconded the motion.

Mr. MADISON observed, that unless inferior tribunals were dispersed throughout the Republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that, besides, an appeal would not in many cases be a remedy. What was to be done after improper verdicts, in State tribunals, obtained under the biassed directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar, would oblige the parties to bring up their witnesses, though ever

so distant from the seat of the court. An effective Judiciary establishment commensurate to the Legislative authority, was essential. A government, without a proper Executive and Judiciary, would be the mere trunk of a body, without arms or legs to act or move.

Mr. WILSON opposed the motion on like grounds. He said the admiralty jurisdiction ought to be given wholly to the National Government, as it related to cases not within the jurisdiction of particular States, and to a scene in which controversies with foreigners would be most likely to happen.

Mr. SHERMAN was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of courts, when the existing State courts would answer the same purpose.

Mr. DICKINSON contended strongly, that if there was to be a National Legislature, there ought to be a National Judiciary, and that the former ought to have authority to institute the latter.

On the question for Mr. RUTLEDGE's motion to strike out "inferior tribunals," it passed in the affirmative,—Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, aye—6; Pennsylvania, Delaware, Maryland, Virginia, no—4; Massachusetts, divided.

Mr. WILSON and Mr. MADISON then moved, in pursuance of the idea expressed above by Mr. DICKINSON, to add to the ninth Resolution the words following: "that the National Legislature be empowered to institute inferior tribunals." They observed, that there was a distinction between establishing such

tribunals absolutely, and giving a discretion to the Legislature to establish or not to establish them. They repeated the necessity of some such provision.

Mr. BUTLER. The people will not bear such innovations. The States will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon, who gave the Athenians not the best government he could devise, but the best they would receive.

Mr. KING remarked, as to the comparative expense, that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them.

On this question, as moved by Mr. WILSON and Mr. MADISON,—Massachusetts, New Jersey,* Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—8; Connecticut, South Carolina, no—2; New York, divided.¹⁰⁴

The Committee then rose, and the House adjourned.

WEDNESDAY, JUNE 6TH.

In Committee of the Whole.—Mr. PINCKNEY, according to previous notice, and rule obtained, moved, “that the first branch of the National Legislature be elected by the State Legislatures, and not by the people;” contending that the people were less fit

* In the printed Journal, New Jersey, no.

judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new government if they were to be excluded from all share in it.

Mr. RUTLEDGE seconded the motion.

Mr. GERRY. Much depends on the mode of election. In England the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme. Hence in Massachusetts the worst men get into the Legislature. Several members of that body had lately been convicted of infamous crimes. Men of indigence, ignorance, and baseness, spare no pains, however dirty, to carry their point against men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever against aristocracy and monarchy. It was necessary, on the one hand, that the people should appoint one branch of the government, in order to inspire them with the necessary confidence; but he wished the election, on the other, to be so modified as to secure more effectually a just preference of merit. His idea was, that the people should nominate certain persons, in certain districts, out of whom the State Legislatures should make the appointment.

Mr. WILSON. He wished for vigor in the government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess, not only, first, the *force*, but second, the *mind or sense*, of the people at large. The Legislature ought to be the most exact transcript of the whole society. Repre-

/sentation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected, he said, from the *governments*, not from the citizens of the States. The latter had parted, as was observed by Mr. KING, *with all the necessary powers*; and it was immaterial to them by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people, he supposed, would be rather more attached to the National Government than to the State Governments, as being more important in itself, and more flattering to their pride: There is no danger of improper elections, if made by *large* districts. Bad elections proceed from the smallness of the districts, which give an opportunity to bad men to intrigue themselves into office.

Mr. SHERMAN. If it were in view to abolish the State Governments, the elections ought to be by the people. If the State Governments are to be continued, it is necessary, in order to preserve harmony between the National and State Governments, that the elections to the former should be made by the latter. The right of participating in the National Government would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he thought were few,—first, defence against foreign danger; secondly, against internal disputes, and a resort to force; thirdly, treaties with foreign nations; fourthly, regulating foreign commerce, and drawing revenue from it. These, and perhaps a few lesser objects, alone rendered a confederation of the States necessary. All other matters, civil and criminal, would be much

better in the hands of the States. The people are more happy in small than in large States. States may, indeed, be too small, as Rhode Island, and thereby be too subject to faction. Some others were, perhaps, too large, the powers of government not being able to pervade them. He was for giving the General Government power to legislate and execute within a defined province.

Col. MASON. Under the existing Confederacy, Congress represent the *States*, and not the *people* of the States; their acts operate on the *States*, not on the *individuals*. The case will be changed in the new plan of government. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are, that the representatives should sympathize with their constituents; should think as they think, and feel as they feel; and that for these purposes they should be residents among them. Much, he said, had been alleged against democratic elections. He admitted that much might be said; but it was to be considered that no government was free from imperfections and evils; and that improper elections in many instances were inseparable from republican governments. But compare these with the advantage of this form, in favor of the rights of the people, in favor of human nature! He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper-money had been issued by the latter, when the former were against it. Was it to be supposed, that the State Legislatures, then, would

not send to the National Legislature patrons of such projects, if the choice depended on them?

Mr. MADISON considered an election of one branch, at least, of the Legislature by the people immediately, as a clear principle of free government; and that this mode, under proper regulations, had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the general one. He differed from the member from Connecticut, (Mr. SHERMAN,) in thinking the objects mentioned to be all the principal ones that required a national government. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of justice. Interferences with these were evils which had, more perhaps than any thing else, produced this Convention. Was it to be supposed, that republican liberty could long exist under the abuses of it practised in some of the States? The gentleman (Mr. SHERMAN) had admitted, that in a very small State faction and oppression would prevail. It was to be inferred, then, that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest, though less than in the smallest? And were we not thence admonished to enlarge the sphere as far as the nature of the government would admit? This was the only defence against the inconveniences of democracy, consistent with the democratic form of government. All civilized societies would be divided into different sects, factions, and interests, as they happened to

consist of rich and poor, debtors and creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim, that honesty is the best policy, is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience, the only remaining tie, is known to be inadequate in individuals; in large numbers, little is to be expected from it. Besides, religion itself may become a motive to persecution and oppression. These observations are verified by the histories of every country, ancient and modern. In Greece and Rome the rich and poor, the creditors and debtors, as well as the patricians and plebeians, alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, and Carthage, and their respective provinces; the former possessing the power, and the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and, if her authority had been admitted, could have pursued that interest ~~at~~ ^{at} her expense. We have seen the mere distinction of color made, in

the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is, that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a republican government, the majority, if united, have always an opportunity. The only remedy is, to enlarge the sphere, and thereby divide the community into so great a number of interests and parties, that, in the first place, a majority will not be likely, at the same moment, to have a common interest separate from that of the whole, or of the minority; and in the second place, that in case they should have such an interest, they may not be so apt to unite in the pursuit of it. It was incumbent on us, then, to try this remedy, and, with that view, to frame a republican system on such a scale, and in such a form, as will control all the evils which have been experienced.

Mr. DICKINSON considered it essential, that one branch of the Legislature should be drawn immediately from the people; and expedient, that the other should be chosen by the Legislatures of the States. This combination of the State Governments with the National Government was as politic as it was

unavoidable. In the formation of the Senate, we ought to carry it through such a refining process as will assimilate it, as nearly as may be, to the House of Lords in England. He repeated his warm eulogiums on the British Constitution. He was for a strong National Government; but for leaving the States a considerable agency in the system. The objection against making the former dependent on the latter might be obviated by giving to the Senate an authority permanent, and irrevocable for three, five or seven years. Being thus independent, they will check and decide with uncommon freedom.

MR. READ. Too much attachment is betrayed to the State Governments. We must look beyond their continuance. A National Government must soon of necessity swallow them all up. They will soon be reduced to the mere office of electing the National Senate. He was against patching up the old Federal system: he hoped the idea would be dismissed. It would be like putting new cloth on an old garment. The confederation was founded on temporary principles. It cannot last: it cannot be amended. If we do not establish a good government on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a General Government. The aversion lies among interested men who possess their confidence.

MR. PIERCE was for an election by the people as to the first branch, and by the States as to the second branch; by which means the citizens of the States would be represented both *individually* and *collectively*.

General PINCKNEY wished to have a good National Government, and at the same time to leave a considerable share of power in the States. An election of either branch by the people, scattered as they are in many States, particularly in South Carolina, was totally impracticable. He differed from gentlemen who thought that a choice by the people would be a better guard against bad measures, than by the Legislatures. A majority of the people in South Carolina were notoriously for paper-money, as a legal tender; the Legislature had refused to make it a legal tender. The reason was, that the latter had some sense of character, and were restrained by that consideration. The State Legislatures, also, he said, would be more jealous, and more ready to thwart the National Government, if excluded from a participation in it. The idea of abolishing these Legislatures would never go down.

Mr. WILSON would not have spoken again, but for what had fallen from Mr. READ; namely that the idea of preserving the State Governments ought to be abandoned. He saw no incompatibility between the National and State Governments, provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated systems, ancient and modern, the reverse had happened; the generality being destroyed gradually by the usurpations of the parts composing it.

On the question for electing the first branch by the State Legislatures as moved by Mr. PINCKNEY, it was negatived,—Connecticut, New Jersey, South Carolina, aye—3; Massachusetts, New York, Penn-

sylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, no—8.¹⁸⁶

Mr. WILSON moved to reconsider the vote excluding the Judiciary from a share in the revision of the laws, and to add, after "national Executive," the words, "with a convenient number of the national Judiciary;" remarking the expediency of reinforcing the Executive with the influence of that department.

Mr. MADISON seconded the motion. He observed, that the great difficulty in rendering the Executive competent to its own defence arose from the nature of republican government, which could not give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest against betraying the national interest, which appertain to an hereditary magistrate. In a republic personal merit alone could be the ground of political exaltation; but it would rarely happen that this merit would be so pre-eminent as to produce universal acquiescence. The executive magistrate would be envied and assailed by disappointed competitors: his firmness therefore would need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest, which would place him out of the reach of foreign corruption. He would stand in need therefore of being controlled as well as supported. An association of the judges in his revisionary function would both double the advantage, and diminish the danger. It would also enable the Judiciary department the better to defend

itself against legislative encroachments. Two objections had been made,—first, that the judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them; secondly, that the Judiciary department ought to be separate and distinct from the other great departments. The first objection had some weight; but it was much diminished by reflecting, that a small proportion of the laws coming in question before a judge would be such wherein he had been consulted; that a small part of this proportion would be so ambiguous as to leave room for his prepossessions; and that but a few cases would probably arise in the life of a judge, under such ambiguous passages. How much good, on the other hand, would proceed from the perspicuity, the conciseness, and the systematic character which the code of laws would receive from the Judiciary talents. As to the second objection, it either had no weight, or it applied with equal weight to the Executive, and to the Judiciary revision of the laws. The maxim on which the objection was founded, required a separation of the Executive, as well as the Judiciary, from the Legislature and from each other. There would, in truth, however, be no improper mixture of these distinct powers in the present case. In England, whence the maxim itself had been drawn, the Executive had an absolute negative on the laws; and the supreme tribunal of justice (the House of Lords), formed one of the other branches of the Legislature. In short, whether the object of the revisionary power was to restrain the Legislature from en-

croaching on the other co-ordinate departments, or on the rights of the people at large; or from passing laws unwise in their principle, or incorrect in their form; the utility of annexing the wisdom and weight of the Judiciary to the Executive seemed incontestable.

Mr. GERRY thought the Executive whilst standing alone would be more impartial than when he could be covered by the sanction and seduced by the sophistry of the Judges.

Mr. KING. If the unity of the Executive was preferred for the sake of responsibility, the policy of it is as applicable to the revisionary, as to the executive, power.

Mr. PINCKNEY had been at first in favor of joining the heads of the principal departments, the Secretary at War, of Foreign Affairs, &c. in the Council of Revision. He had, however, relinquished the idea, from a consideration that these could be called on by the executive magistrate, whenever he pleased to consult them. He was opposed to the introduction of the judges into the business.

Colonel MASON was for giving all possible weight to the revisionary institution. The executive power ought to be well secured against legislative usurpations on it. The purse and the sword ought never to get into the same hands whether legislative or executive.

Mr. DICKINSON. Secrecy, vigor, and despatch are not the principal properties required in the Executive. Important as these are, that of responsibility is more so, which can only be preserved by leaving it singly to discharge its functions. He thought, too,

a junction of the Judiciary to it involved an improper mixture of powers.

Mr. WILSON remarked, that the responsibility required belonged to his executive duties. The revisionary duty was an extraneous one, calculated for collateral purposes.

Mr. WILLIAMSON was for substituting a clause requiring two-thirds for every effective act of the legislature, in place of the revisionary provision.

On the question for joining the judges to the Executive in the revisionary business,—Connecticut, New York, Virginia, aye—3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, no—8.

Mr. PINCKNEY gave notice, that to-morrow he should move for the re-consideration of that clause in the sixth Resolution adopted by the Committee, which vests a negative in the National Legislature on the laws of the several States.

The Committee rose, and the House adjourned.

THURSDAY, JUNE 7TH.

In Committee of the Whole—Mr. PINCKNEY, according to notice, moved to reconsider the clause respecting the negative on State laws, which was agreed to, and to-morrow fixed for the purpose.

The clause providing for the appointment of the second branch of the National Legislature, having lain blank since the last vote on the mode of electing it, to wit, by the first branch, Mr. DICKINSON now moved, "that the members of the second branch ought to be chosen by the individual Legislatures."

Mr. SHERMAN seconded the motion; observing, that the particular States would thus become interested in supporting the National Government, and that a due harmony between the two governments would be maintained. He admitted that the two ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

Mr. PINCKNEY. If the small States should be allowed one Senator only, the number will be too great; there will be eighty at least.

Mr. DICKINSON had two reasons for his motion—first, because the sense of the States would be better collected through their Governments, than immediately from the people at large; secondly, because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the State Legislatures, than in any other mode. The greatness of the number was no objection with him. He hoped there would be eighty, and twice eighty of them. If their number should be small, the popular branch could not be balanced by them. The Legislature of a numerous people ought to be a numerous body.

Mr. WILLIAMSON preferred a small number of Senators, but wished that each State should have at least one. He suggested twenty-five as a convenient number. The different modes of representation in the different branches will serve as a mutual check.

Mr. BUTLER was anxious to know the ratio of representation before he gave any opinion.

Mr. WILSON. If we are to establish a National Government, that government ought to flow from the people at large. If one branch of it should be chosen by the Legislatures, and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people, as well as the other branch; the people might be divided into proper districts for the purpose; and he moved to postpone the motion of Mr. Dickinson, in order to take up one of that import.

Mr. MORRIS seconded him.

Mr. READ proposed "that the Senate should be appointed by the Executive magistrate, out of a proper number of persons to be nominated by the individual Legislatures." He said, he thought it his duty to speak his mind frankly. Gentlemen he hoped would not be alarmed at the idea. Nothing short of this approach towards a proper model of government would answer the purpose, and he thought it best to come directly to the point at once. His proposition was not seconded nor supported.

Mr. MADISON. If the motion (of Mr. DICKINSON) should be agreed to, we must either depart from the doctrine of proportional representation, or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch. Enlarge their number, and you com-

municate to them the vices which they are meant to correct. He differed from Mr. Dickinson, who thought that the additional number would give additional weight to the body. On the contrary, it appeared to him that their weight would be in an inverse ratio to their numbers. The example of the Roman tribunes was applicable. They lost their influence and power, in proportion as their number was augmented. The reason seemed to be obvious: they were appointed to take care of the popular interests and pretensions at Rome; because the people by reason of their numbers could not act in concert, and were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people, therefore, were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves, either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters, the greater the number, the greater the weight. When it depends on the degree of political authority lodged in them, the smaller the number, the greater the weight. These considerations might perhaps be combined in the intended Senate; but the latter was the material one.

Mr. GERRY. Four modes of appointing the Senate have been mentioned. First, by the first branch of the National Legislature,—this would create a dependance contrary to the end proposed. Secondly, by the National Executive,—this is a stride towards

monarchy that few will think of. Thirdly, by the people; the people have two great interests, the landed interest, and the commercial, including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously supposing that the other interests are adverse to it. Fourthly, by the individual Legislatures,—the elections being carried through this refinement, will be most like to provide some check in favor of the commercial interest against the landed; without which, oppression will take place; and no free government can last long where that is the case. He was therefore in favor of this last.

MR. DICKINSON.* The preservation of the States in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the States altogether, would degrade the councils of our country, would be impracticable, would be ruinous. He compared the proposed national system to the solar system, in which the States were the planets, and ought to be left to move freely in their proper orbits. The gentleman from Pennsylvania (Mr. WILSON) wished, he said, to extinguish these planets. If the State Governments were excluded from all agency in the national one, and all power drawn

* It will throw light on this discussion to remark that an election by the State Legislatures involved a surrender of the principle insisted on by the large States, and dreaded by the small ones, namely, that of a proportional representation in the Senate. Such a rule would make the body too numerous, and the smallest State must elect one member at least.

from the people at large, the consequence would be that the National Government would move in the same direction as the State Governments now do, and would run into all the same mischiefs. The reform would only unite the thirteen small streams into one great current, pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number; and that their influence, from family weight and other causes, would be increased thereby. He did not admit that the Tribunes lost their weight in proportion as their number was augmented, and gave a historical sketch of this institution. If the reasoning (of Mr. MADISON) was good, it would prove that the number of the Senate ought to be reduced below ten, the highest number of the Tribunitial corps.

Mr. WILSON. The subject, it must be owned, is surrounded with doubts and difficulties. But we must surmount them. The British Government cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it. He did not see the danger of the States being devoured by the National Government. On the contrary, he wished to keep them from devouring the National Government. He was not, however, for extinguishing these planets, as was supposed by Mr. DICKINSON; neither did he, on the other hand, believe that they would warm or enlighten the sun. Within their proper orbits they must still be suffered to act for subordinate purposes, for which their existence is made essential by the

great extent of our country. He could not comprehend in what manner the landed interest would be rendered less predominant in the Senate by an election through the medium of the Legislatures, than by the people themselves. If the Legislatures, as was now complained, sacrificed the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own views? He was for an election by the people, in large districts, which would be most likely to obtain men of intelligence and uprightness; subdividing the districts only for the accommodation of voters.

Mr. MADISON could as little comprehend in what manner family weight, as desired by Mr. DICKINSON, would be more certainly conveyed into the Senate through elections by the State Legislatures, than in some other modes. The true question was, in what mode the best choice would be made? If an election by the people, or through any other channel than the State Legislatures, promised as uncorrupt and impartial a preference of merit, there could surely be no necessity for an appointment by those Legislatures. Nor was it apparent that a more useful check would be derived through that channel, than from the people through some other. The great evils complained of were, that the State Legislatures run into schemes of paper-money, &c., whenever solicited by the people, and sometimes without even the sanction of the people. Their influence, then, instead of checking a like propensity in the National Legislature, may be expected to promote it. Nothing can be more contradictory than to say that the National Legislature, without a

proper check, will follow the example of the State Legislatures; and, in the same breath, that the State Legislatures are the only proper check.

Mr. SHERMAN opposed elections by the people in districts, as not likely to produce such fit men as elections by the State Legislatures.

Mr. GERRY insisted, that the commercial and monied interest would be more secure in the hands of the State Legislatures, than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper-money, when the Legislatures are against it. In Massachusetts the county conventions had declared a wish for a *depreciating* paper that would sink itself. Besides, in some States there are two branches in the Legislature, one of which is somewhat aristocratic. There would therefore be so far a better chance of refinement in the choice. There seemed, he thought, to be three powerful objections against elections by districts. First, it is impracticable; the people cannot be brought to one place for the purpose; and, whether brought to the same place or not, numberless frauds would be unavoidable. Secondly, small States, forming part of the same district with a large one, or a large part of a large one, would have no chance of gaining an appointment for its citizens of merit. Thirdly, a new source of discord would be opened between different parts of the same district.

Mr. PINCKNEY thought the second branch ought to be permanent and independent; and that the members of it would be rendered more so by receiving their appointments from the State Legislatures.

This mode would avoid the rivalships and discontents incident to the election by districts. He was for dividing the States in three classes, according to their respective sizes, and for allowing to the first class three members; to the second, two; and to the third, one.

On the question for postponing Mr. DICKINSON's motion, referring the appointment of the Senate to the State Legislatures, in order to consider Mr. WILSON's for referring it to the people, Pennsylvania, aye—1; Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—10.

Col. MASON. Whatever power may be necessary for the National Government, a certain portion must necessarily be left with the States. It is impossible for one power to pervade the extreme parts of the United States, so as to carry equal justice to them. The State Legislatures also ought to have some means of defending themselves against encroachments of the National Government. In every other department we have studiously endeavoured to provide for its self-defence. Shall we leave the States alone unprovided with the means for this purpose? And what better means can we provide, than the giving them some share in, or rather to make them a constituent part of, the national establishment? There is danger on both sides, no doubt; but we have only seen the evils arising on the side of the State Governments. Those on the other side remain to be displayed. The example of Congress does not apply. Congress had no power to carry their acts

into execution, as the National Government will have.

On Mr. DICKINSON's motion for an appointment of the Senate by the State Legislatures,—Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—10.¹⁷

Mr. GERRY gave notice, that he would to-morrow move for a reconsideration of the mode of appointing the National Executive, in order to substitute an appointment by the State Executives.

The Committee rose, and the House adjourned.

FRIDAY, JUNE 8TH.

In Committee of the Whole.—On a reconsideration of the clause giving the National Legislature a negative on such laws of the States as might be contrary to the Articles of Union, or treaties with foreign nations;

Mr. PINCKNEY moved, "that the National Legislature should have authority to negative all laws which they should judge to be improper." He urged that such a universality of the power was indispensably necessary to render it effectual; that the States must be kept in due subordination to the nation; that if the States were left to act of themselves in any case, it would be impossible to defend the national prerogatives, however extensive they might be, on paper; that the acts of Congress had been defeated by this means; nor had foreign trea-

ties escaped repeated violations: that this universal negative was in fact the corner-stone of an efficient national Government; that under the British Government the negative of the Crown had been found beneficial, and the *States* are more one nation now, than the *colonies* were then.

Mr. MADISON seconded the motion. He could not but regard an indefinite power to negative legislative acts of the States as absolutely necessary to a perfect system. Experience had evinced a constant tendency in the States to encroach on the Federal authority; to violate national treaties; to infringe the rights and interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy would be in an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbours? It would not be possible. A small proportion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the States, would prove as visionary and fallacious as the government of Congress. The negative would render the use of force unnecessary. The States

could of themselves pass no operative act, any more than one branch of a legislature, where there are two branches, can proceed without the other. But in order to give the negative this efficacy, it must extend to all cases. A discrimination would only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system, this prerogative of the General Government is the great pervading principle that must control the centrifugal tendency of the States; which, without it, will continually fly out of their proper orbits, and destroy the order and harmony of the political system.

Mr. WILLIAMSON was against giving a power that might restrain the States from regulating their internal police.

Mr. GERRY could not see the extent of such a power, and was against every power that was not necessary. He thought a remonstrance against unreasonable acts of the States would restrain them. If it should not, force might be resorted to. He had no objection to authorize a negative to paper-money and similar measures. When the confederation was depending before Congress, Massachusetts was then for inserting the power of emitting paper-money among the exclusive powers of Congress. He observed, that the proposed negative would extend to the regulations of the militia, a matter on which the existence of the State might depend. The National Legislature, with such a power, may enslave the States. Such an idea as this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector—and there

are enough of that character among us, in politics as well as in other things—has, in any pamphlet or newspaper, thrown out the idea. The States, too, have different interests, and are ignorant of each other's interests. The negative, therefore, will be abused. New States, too, having separate views from the old States, will never come into the Union. They may even be under some foreign influence; are they in such case to participate in the negative on the will of the other States?

Mr. SHERMAN thought the cases in which the negative ought to be exercised might be defined. He wished the point might not be decided till a trial at least should be made for that purpose.

Mr. WILSON would not say what modifications of the proposed power might be practicable or expedient. But, however novel it might appear, the principle of it, when viewed with a close and steady eye, is right. There is no instance in which the laws say that the individual should be bound in one case, and at liberty to judge whether he will obey or disobey in another. The cases are parallel. Abuses of the power over the individual persons may happen, as well as over the individual States. Federal liberty is to the States what civil liberty is to private individuals; and States are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of the personal sovereignty which he enjoys in a state of nature. A definition of the cases in which the negative should be exercised is impracticable. A discretion must be left on one side or the other,—will

it not be most safely lodged on the side of the National Government? Among the first sentiments expressed in the first Congress, one was, that Virginia is no more, that Massachusetts is no more, that Pennsylvania is no more, &c.—we are now one nation of brethren;—we must bury all local interests and distinctions. This language continued for some time. The tables at length began to turn. No sooner were the State Governments formed than their jealousy and ambition began to display themselves; each endeavoured to cut a slice from the common loaf, to add to its own morsel, till at length the Confederation became frittered down to the impotent condition in which it now stands. Review the progress of the Articles of Confederation through Congress, and compare the ~~first~~ and last draught of it. To correct its vices is ~~the~~ business of this Convention. One of its vices is the want of an effectual control in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

Mr. DICKINSON deemed it impossible to draw a line between the cases proper, and improper, for the exercise of the negative. We must take our choice of two things. We must either subject the States to the danger of being injured by the power of the National Government, or the latter to the danger of being injured by that of the States. He thought the danger greater from the States. To leave the power doubtful, would be opening another spring of discord, and he was for shutting as many of them as possible.

Mr. BEDFORD, in answer to his colleague's question, where would be the danger to the States from this power, would refer him to the smallness of his own State, which may be injured at pleasure without redress. It was meant, he found, to strip the small States of their equal right of suffrage. In this case Delaware would have about one-ninetieth for its share in the general councils; whilst Pennsylvania and Virginia would possess one-third of the whole. Is there no difference of interests, no rivalry of commerce, of manufactures? Will not these large States crush the small ones, whenever they stand in the way of their ambitious or interested views? This shows the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation. And after all, if a State does not obey the law of the new system, must not force be resorted to, as the only ultimate remedy in this as in any other system? It seems as if Pennsylvania and Virginia, by the conduct of their deputies, wished to provide a system in which they would have an enormous and monstrous influence. Besides, how can it be thought that the proposed negative can be exercised? Are the laws of the States to be suspended in the most urgent cases, until they can be sent seven or eight hundred miles, and undergo the deliberation of a body who may be incapable of judging of them? Is the National Legislature, too, to sit continually in order to revise the laws of the States?

Mr. MADISON observed, that the difficulties which had been started were worthy of attention, and

ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the National Government into each State, so far as to give a temporary assent at least. This was the practice in the Royal Colonies before the Revolution, and would not have been inconvenient if the supreme power of negating had been faithful to the American interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the Senate alone, and that the more numerous and expensive branch therefore might not be obliged to sit constantly. He asked Mr. BEDFORD, what would be the consequence to the small States of a dissolution of the Union, which seemed likely to happen if no effectual substitute was made for the defective system existing?—and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage. If the large States possessed the avarice and ambition with which they were charged, would the small ones in their neighbourhood be more secure when all control of a General Government was withdrawn?

Mr. BUTLER was vehement against the negative in the proposed extent, as cutting off all hope of equal justice to the distant States. The people there would not, he was sure give it a hearing.

On the question for extending the negative power to all cases, as proposed by Mr. PINCKNEY and Mr. MADISON,—Massachusetts, Pennsylvania, Virginia, (Mr. RANDOLPH and Mr. MASON, no; Mr. BLAIR, Doctor McCLURG and Mr. MADISON, aye; General

WASHINGTON not consulted,) aye—3; Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no—7; Delaware, divided, (Mr. READ and Mr. DICKINSON, aye; Mr. BEDFORD and Mr. BASSET, no).¹⁰⁰

On motion of Mr. GERRY and Mr. KING, to-morrow was assigned for reconsidering the mode of appointing the national Executive; the reconsideration being voted for by all the States except Connecticut and North Carolina.

Mr. PINCKNEY and Mr. RUTLEDGE moved to add to the fourth Resolution, agreed to by the Committee, the following, viz.: "that the States be divided into three classes, the first class to have three members, the second two, and the third one member, each; that an estimate be taken of the comparative importance of each State at fixed periods, so as to ascertain the number of members they may from time to time be entitled to." The Committee then rose, and the House adjourned.

SATURDAY, JUNE 9TH.

Mr. LUTHER MARTIN, from Maryland, took his seat.

In Committee of the Whole.—Mr. GERRY, according to previous notice given by him, moved "that the national Executive should be elected by the Executives of the States, whose proportion of votes should be the same with that allowed to the States, in the election of the Senate." If the appointment should be made by the National Legislature, it would lessen that independence of the Executive, which ought to prevail; would give birth to intrigue

and corruption between the Executive and Legislature previous to the election, and to partiality in the Executive afterwards to the friends who promoted him. Some other mode, therefore, appeared to him necessary. He proposed that of appointing by the State Executives, as most analagous to the principle observed in electing the other branches of the National Government; the first branch being chosen by the *people* of the States and the second by the Legislatures of the States, he did not see any objection against letting the Executive be appointed by the Executives of the States. He supposed the Executives would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.

Mr. RANDOLPH urged strongly the inexpediency of Mr. GERRY's mode of appointing the National Executive. The confidence of the people would not be secured by it to the National magistrate. The small States would lose all chance of an appointment from within themselves. Bad appointments would be made, the Executives of the States being little conversant with characters not within their own small spheres. The State Executives, too, notwithstanding their constitutional independence, being in fact dependent on the State Legislatures, will generally be guided by the views of the latter, and prefer either favorites within the States, or such as it may be expected will be most partial to the interests of the State. A national Executive thus chosen will not be likely to defend with becoming vigilance and firmness the national rights against State encroachments. Vacancies also must

happen. How can these be filled? He could not suppose, either, that the Executives would feel the interest in supporting the national Executive which had been imagined. They will not cherish the great oak which is to reduce them to paltry shrubs.

On the question for referring the appointment of the national Executive to the State Executives, as proposed by Mr. GERRY,—Massachusetts, Connecticut New York, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no; Delaware, divided.¹⁰⁰

Mr. PATTERSON moved, that the Committee resume the clause relating to the rule of suffrage in the National Legislature.

Mr. BREARLY seconds him. He was sorry, he said, that any question on this point was brought into view. It had been much agitated in Congress at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign State an equal vote. Otherwise, the smaller States must have been destroyed instead of being saved. The substitution of a ratio, he admitted, carried fairness on the face of it; but on a deeper examination was unfair and unjust. Judging of the disparity of the States by the quota of Congress, Virginia would have sixteen votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be three large States, and ten small ones. The large States, by which he meant Massachusetts, Pennsylvania and Virginia, will carry every thing before them. It had been admitted, and was known to him from facts within New Jersey, that where large and small counties

were united into a district for electing representatives for the district, the large counties always carried their point, and consequently the large States would do so. Virginia with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia with her solitary vote, and the other little States, will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the Convention with a view of being as useful as he could, in giving energy and stability to the Federal Government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair, then, it will be asked, that Georgia should have an equal vote with Virginia? He would not say it was. What remedy then? One only, that a map of the United States be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into thirteen equal parts.

Mr. PATTERSON considered the proposition for a proportional representation as striking at the existence of the lesser States. He would premise, however, to an investigation of this question, some remarks on the nature, structure, and powers of the Convention. The Convention, he said, was formed in pursuance of an act of Congress; that this act was recited in several of the commissions, particularly that of Massachusetts, which he required to be read; that the amendment of the Confederacy was the object of all the laws and commissions on the subject; that the Articles of the Confederation were therefore the proper basis of all the proceedings of

the Convention ; that we ought to keep within its limits, or we should be charged by our constituents with usurpation ; that the people of America were sharp-sighted, and not to be deceived. But the commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the States on the subject of our deliberation. The idea of a National Government, as contradistinguished from a federal one, never entered into the mind of any of them ; and to the public mind we must accommodate ourselves. We have no power to go beyond the Federal scheme ; and if we had, the people are not ripe for any other. We must follow the people ; the people will not follow us. The *proposition* could not be maintained, whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it, and sovereignty supposes equality. If we are to be considered as a nation, all State distinctions must be abolished, the whole must be thrown into hotchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virginia, Massachusetts, and Pennsylvania, as the three large States, and the other ten as small ones ; repeating the calculations of Mr. BREARLY, as to the disparity of votes which would take place, and affirming that the small States would never agree to it. He said there was no more reason that a great individual State, contributing much, should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one. If the ratcable property of A was to

that of B as forty to one, ought A for that reason to have forty times as many votes as B? Such a principle would never be admitted; and if it were admitted would put B entirely at the mercy of A. As A has more to be protected than B, so he ought to contribute more for the common protection. The same may be said of a large State, which has more to be protected than a small one. Give the large States an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small States will have every thing to fear. It was once proposed by Galloway, and some others, that America should be represented in the British Parliament, and then be bound by its laws. America could not have been entitled to more than one-third of the representatives which would fall to the share of Great Britain,—would American rights and interests have been safe under an authority thus constituted? It has been said, that if a national Government is to be formed, so as to operate on the people and not on the States, the Representatives ought to be drawn from the people. But why so? May not a Legislature, filled by the State Legislatures, operate on the people who choose the State Legislatures? Or may not a practicable coercion be found? He admitted that there was none such in the existing system. He was attached strongly to the plan of the existing Confederacy, in which the people choose their legislative representatives; and the Legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the States with due precision, and provide for the use of coercion,

which was the great point. He alluded to the hint thrown out by Mr. WILSON, of the necessity to which the large States might be reduced, of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. New Jersey will never confederate on the plan before the Committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here, but on his return home do every thing in his power to defeat it there.

Mr. WILSON hoped, if the Confederacy should be dissolved, that a *majority*,—nay, a *minority* of the States would unite for their safety. He entered elaborately into the defence of a proportional representation, stating for his first position, that, as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people, different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time. As to the case of A and B stated by Mr. PATTERSON, he observed, that, in districts as large as the States, the number of people was the best measure of their comparative wealth. Whether, therefore, wealth or numbers was to form the ratio it would be the same. Mr. PATTERSON admitted persons, not property, to be the measure of suffrage. Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require one hundred and fifty of the former to balance fifty of the latter? Representatives of different districts

ought clearly to hold the same proportion to each other, as their respective constituents hold to each other. If the small States will not confederate on this plan, Pennsylvania, and he presumed some other States, would not confederate on any other. We have been told that each State being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of civil government? He cannot. As little can a sovereign State, when it becomes a member of a federal government. If New Jersey will not part with her sovereignty, it is vain to talk of government. A new partition of the States is desirable, but evidently and totally impracticable.

Mr. WILLIAMSON illustrated the cases by a comparison of the different States to counties of different sizes within the same State; observing that proportional representation was admitted to be just in the latter case, and could not, therefore, be fairly contested in the former.

The question being about to be put, Mr. PATTERSON hoped that as so much depended on it, it might be thought best to postpone the decision till tomorrow; which was done, *nem. con.*

The Committee rose, and the House adjourned.

MONDAY, JUNE 11TH.

Mr. ABRAHAM BALDWIN, from Georgia, took his seat.

In Committee of the Whole,—The clause concerning the rule of suffrage in the National Legislature, postponed on Saturday, was resumed.

Mr. SHERMAN proposed, that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants; and that in the second branch, or Senate, each State should have one vote and no more. He said, as the States would remain possessed of certain individual rights, each State ought to be able to protect itself; otherwise, a few large States will rule the rest. The House of Lords in England, he observed, had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons, that they may be able to defend their rights.

Mr. RUTLEDGE proposed, that the proportion of suffrage in the first branch should be according to the quotas of contribution. The justice of this rule, he said, could not be contested. Mr. BUTLER urged the same idea; adding, that money was power; and that the States ought to have weight in the government in proportion to their wealth.

Mr. KING and Mr. WILSON,* in order to bring the question to a point, moved, "that the right of suffrage in the first branch of the National Legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation." The clause, so far as it related to suffrage in the first branch, was postponed, in order to consider this motion.

Mr. DICKINSON contended for the *actual* contribu-

* In the printed Journal Mr. Rutledge is named as the seconder of the motion.

tions of the States, as the rule of their representation and suffrage in the first branch. By thus connecting the interests of the States with their duty, the latter would be sure to be performed.

Mr. KING remarked, that it was uncertain what mode might be used in levying a national revenue; but that it was probable, imposts would be one source of it. If the *actual* contributions were to be the rule, the non-importing States, as Connecticut and New Jersey, would be in a bad situation, indeed. It might so happen that they would have no representation. This situation of particular States had been always one powerful argument in favor of the five *per cent.* impost.

The question being about to be put, Doctor FRANKLIN said, he had thrown his ideas of the matter on a paper, which Mr. WILSON read to the Committee, in the words following:

Mr. CHAIRMAN,—It has given me great pleasure to observe, that, till this point, the proportion of representation, came before us, our debates were carried on with great coolness and temper. If any thing of a contrary kind has on this occasion appeared, I hope it will not be repeated; for we are sent here to *consult*, not to *contend*, with each other; and declarations of a fixed opinion, and of determined resolution never to change it, neither enlighten nor convince us. Positiveness and warmth on one side naturally beget their like on the other, and tend to create and augment discord and division, in a great concern wherein harmony and union are extremely necessary to give weight to our councils,

and render them effectual in promoting and securing the common good.

“I must own, that I was originally of opinion it would be better if every member of Congress, or our national Council, were to consider himself rather as a representative of the whole, than as an agent for the interests of a particular State; in which case the proportion of members for each State would be of less consequence, and it would not be very material whether they voted by States or individually. But as I find this is not to be expected, I now think the number of representatives should bear some proportion to the number of the represented; and that the decisions should be by the majority of members, not by the majority of the States. This is objected to from an apprehension that the greater States would then swallow up the smaller. I do not at present clearly see what advantage the greater States could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that, in the beginning of this century, when the union was proposed of the two kingdoms, England and Scotland, the Scotch patriots were full of fears, that unless they had an equal number of representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed, however, that the different proportions of importance in the union of the two nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords. A very great

inferiority of numbers ! And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland ; and whoever looks over the lists of public officers, civil and military, of that nation, will find, I believe, that the North Britons enjoy at least their full proportion of emolument.

“ But, sir, in the present mode of voting by States, it is equally in the power of the lesser States to swallow up the greater ; and this is mathematically demonstrable. Suppose, for example, that seven smaller States had each three members in the House, and the six larger to have, one with another six members ; and that, upon a question, two members of each smaller State should be in the affirmative, and one in the negative, they would make :— affirmatives, 14 ; negatives, 7 ; and that all the larger States should be unanimously in the negative, they would make, negatives, 36 ; in all, affirmatives, 14, negatives, 43.

“ It is, then, apparent, that the fourteen carry the question against the forty-three, and the minority overpowers the majority, contrary to the common practice of assemblies in all countries and ages.

“ The greater States, sir, are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the States. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practi-

cable. Formerly, indeed, when almost every province had a different constitution, some with greater, others with fewer, privileges, it was of importance to the borderers, when their boundaries were contested, whether, by running the division lines, they were placed on one side or the other. At present, when such differences are done away, it is less material. The interest of a State is made up of the interests of its individual members. If they are not injured, the State is not injured. Small States are, more easily well and happily governed than large ones. If, therefore, in such an equal division, it should be found necessary to diminish Pennsylvania, I should not be averse to the giving a part of it to New Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division; and, however equally made at first, it would be continually varying by the augmentation of inhabitants in some States, and their fixed proportion in others, and thence frequently occasion new divisions I beg leave to propose, for the consideration of the Committee, another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

“Let the weakest State say what proportion of money or force it is able and willing to furnish for the general purposes of the Union :

“Let all the others oblige themselves to furnish each an equal proportion :

“The whole of these joint supplies to be absolutely in the disposition of Congress :

“The Congress in this case to be composed of an equal number of delegates from each State :

“And their decisions to be by the majority of individual members voting.

“If these joint and equal supplies should, on particular occasions, not be sufficient, let Congress make requisitions on the richer and more powerful States for further aids, to be voluntarily afforded, leaving to each State the right of considering the necessity and utility of the aid desired, and of giving more or less as it should be found proper.

“This mode is not new. It was formerly practised with success by the British government with respect to Ireland and the Colonies. We sometimes gave even more than they expected, or thought just to accept ; and in the last war, carried on while we were united, they gave us back in five years a million sterling. We should probably have continued such voluntary contributions, whenever the occasions appeared to require them for the common good of the Empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions, that we refused and resisted. These contributions, however, were to be disposed of at the pleasure of a government in which we had no representative. I am, therefore, persuaded, that they will not be refused to one in which the representation shall be equal.

“My learned colleague (Mr. WILSON) has already mentioned, that the present method of voting by States was submitted to originally by Congress under a conviction of its impropriety, inequality, and injustice. This appears in the words of their reso-

lution. It is of the sixth of September, 1774. The words are :

“Resolved, that in determining questions in this Congress each Colony or Province shall have one vote; the Congress not being possessed of, or at present able to procure, materials for ascertaining the importance of each Colony.”

On the question for agreeing to Mr. KING's and Mr. WILSON's motion, it passed in the affirmative,—Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—7; New York, New Jersey, Delaware, no—3; Maryland, divided.

It was then moved by Mr. RUTLEDGE, seconded by Mr. BUTLER, to add to the words, “equitable ratio of representation,” at the end of the motion just agreed to, the words “according to the quotas of contribution.” On motion of Mr. WILSON, seconded by Mr. PINCKNEY, this was postponed; in order to add, after the words, “equitable ratio of representation,” the words following: “in proportion to the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each State”—this being the rule in the act of Congress, agreed to by eleven States, for apportioning quotas of revenue on the States, and requiring a census only every five, seven, or ten years.

Mr. GERRY thought property not the rule of representation. Why, then, should the blacks, who

were property in the South, be in the rule of representation more than the cattle and horses of the North?

On the question,—Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; New Jersey, Delaware, no—2.²⁰⁰

Mr. SHERMAN moved, that a question be taken, whether each State shall have one vote in the second branch. Every thing, he said, depended on this. The smaller States would never agree to the plan on any other principle than an equality of suffrage in this branch. Mr. ELLSWORTH seconded the motion. On the question for allowing each State one vote in the second branch,—Connecticut, New York, New Jersey, Delaware, Maryland, aye—5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—6.

Mr. WILSON and Mr. HAMILTON moved, that the right of suffrage in the second branch ought to be according to the same rule as in the first branch.

On this question for making the ratio of representation, the same in the second as in the first branch, it passed in the affirmative,—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—6; Connecticut, New York, New Jersey, Delaware, Maryland, no—5.²⁰¹

The eleventh Resolution, for guaranteeing republican government and territory to each State, being considered, the words "or partition," were, on motion of Mr. MADISON, added after the words "voluntary junction,"—Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina,

Georgia, aye—7; Connecticut, New Jersey, Delaware, Maryland, no—4.

Mr. READ disliked the idea of guaranteeing territory. It abetted the idea of distinct States, which would be a perpetual source of discord. There can be no cure for this evil but in doing away States altogether, and uniting them all into one great society.

Alterations having been made in the Resolution, making it read, "that a Republican constitution, and its existing laws, ought to be guaranteed to each State by the United States," the whole was agreed to, *nem. con.*

The thirteenth Resolution, for amending the national Constitution, hereafter, without consent of the national Legislature, being considered, several members did not see the necessity of the Resolution at all, nor the propriety of making the consent of the National Legislature unnecessary.

Col. MASON urged the necessity of such a provision. The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments, therefore, will be necessary; and it will be better to provide for them in an easy, regular and constitutional way, than to trust to chance and violence. It would be improper to require the consent of the National Legislature, because they may abuse their power, and refuse their assent on that very account. The opportunity for such an abuse may be the fault of the Constitution calling for amendment.

Mr. RANDOLPH enforced these arguments.

The words, "without requiring the consent of the

National Legislature," were postponed. The other provision in the clause passed, *nem. con.*^{ms}

The fourteenth resolution, requiring oaths from the members of the State Governments to observe the national Constitution and laws, being considered,—

Mr. SHERMAN opposed it, as unnecessarily intruding into the State jurisdictions.

Mr. RANDOLPH considered it necessary to prevent that competition between the national Constitution and laws, and those of the particular States, which had already been felt. The officers of the States are already under oath to the States. To preserve a due impartiality they ought to be equally bound to the National Government. The national authority needs every support we can give it. The Executive and Judiciary of the States, notwithstanding their nominal independence on the State Legislatures, are in fact so dependent on them, that unless they be brought under some tie to the National System, they will always lean too much to the State systems, whenever a contest arises between the two.

Mr. GERRY did not like the clause. He thought there was as much reason for requiring an oath of fidelity to the States from national officers, as *vice versa*.

Mr. LUTHER MARTIN moved to strike out the words requiring such an oath from the State officers, viz.: "within the several States," observing, that if the new oath should be contrary to that already taken by them, it would be improper; if coincident, the oaths already taken will be sufficient.

On the question for striking out as proposed by Mr. L. MARTIN,—Connecticut, New Jersey, Delaware, Maryland, aye—4; Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—7.

Question on the whole Resolution as proposed by Mr. RANDOLPH,—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—6; Connecticut, New York, New Jersey, Delaware, Maryland, no—5.²²³

The Committee rose, and the House adjourned.

TUESDAY, JUNE 12TH.

In Committee of the Whole,—The question was taken on the fifteenth Resolution, to wit, referring the new system to the people of the United States for ratification. It passed in the affirmative,—Massachusetts, Pennsylvania,* Virginia, North Carolina, South Carolina, Georgia, aye—6; Connecticut, New York, New Jersey, no—3; Delaware, Maryland, divided.²²⁴

Mr. SHERMAN and Mr. ELLSWORTH moved to fill the blank left in the fourth Resolution, for the periods of electing the members of the first branch, with the words, "every year;" Mr. SHERMAN observing that he did it in order to bring on some question.

Mr. RUTLEDGE proposed "every two years."

Mr. JENIFER proposed, "every three years;" observing that the too great frequency of elections ren-

* Pennsylvania omitted in the printed Journal. The vote is there entered as of June 11th.

dered the people indifferent to them, and made the best men unwilling to engage in so precarious a service.

Mr. MADISON seconded the motion for three years. Instability is one of the great vices of our republics to be remedied. Three years will be necessary, in a government so extensive, for members to form any knowledge of the various interests of the States to which they do not belong, and of which they can know but little from the situation and affairs of their own. One year will be almost consumed in preparing for, and travelling to and from the seat of national business.

Mr. GERRY. The people of New England will never give up the point of annual elections. They know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation. He considered annual elections as the only defence of the people against tyranny. He was as much against a triennial House, as against a hereditary Executive.

Mr. MADISON observed, that if the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the Convention could say what the opinions of his constituents were at this time; much less could he say what they would think, if possessed of the information and lights possessed by the members here; and still less, what would be their way of thinking six or twelve months hence. We ought to consider what was right and necessary in itself for the attainment of a proper government. A plan

adjusted to this idea will recommend itself. The respectability of this Convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it; and all the most enlightened and respectable citizens will be its advocates. Should we fall short of the necessary and proper point, this influential class of citizens will be turned against the plan, and little support in opposition to them can be gained to it from the unreflecting multitude.

Mr. GERRY repeated his opinion, that it was necessary to consider what the people would approve. This had been the policy of all legislators. If the reasoning (of Mr. MADISON) were just, and we supposed a limited monarchy the best form in itself, we ought to recommend it, though the genius of the people was decidedly adverse to it, and, having no hereditary distinctions among us, we were destitute of the essential materials for such an innovation.

On the question for the triennial election of the first branch,—New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, aye—7; Massachusetts, (Mr. KING, aye, Mr. GORHAM, wavering) Connecticut, North Carolina, South Carolina, no—4.²⁰⁵

The words requiring members of the first branch to be of the age of ——— years were struck out, —Maryland alone, no.

The words "*liberal compensation for members*," being considered, Mr. MADISON moved to insert the words, "and fixed." He observed that it would be improper to leave the members of the National Legislature to be provided for by the State Legisla-

tures, because it would create an improper dependence; and to leave them to regulate their own wages was an indecent thing, and might in time prove a dangerous one. He thought wheat, or some other article of which the average price, throughout a reasonable period preceding, might be settled in some convenient mode, would form a proper standard.

Colonel MASON seconded the motion; adding, that it would be improper, for other reasons, to leave the wages to be regulated by the States,—first, the different States would make different provision for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal; secondly, the parsimony of the States might reduce the provision so low, that, as had already happened in choosing delegates to Congress, the question would be, not who were most fit to be chosen, but who were most willing to serve.

On the question for inserting the words, “and fixed,”—New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—8; Massachusetts, Connecticut, South Carolina, no—3.

Doctor FRANKLIN said, he approved of the amendment just made for rendering the salaries as fixed as possible; but disliked the word “*liberal*.” He would prefer the word “*moderate*,” if it was necessary to substitute any other. He remarked the tendency of abuses, in every case, to grow of themselves when once begun; and related very pleasantly the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for

the apostles, to the establishment of the papal system. The word "liberal" was struck out, *nem con.*

On the motion of Mr. PIERCE, that the wages should be paid out of the National Treasury, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—8; Connecticut, New York, South Carolina, no—3.

Question on the clause relating to term of service and compensation of the first branch,—Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—8; Connecticut, New York, South Carolina, no—3.

On a question for striking out the "*ineligibility* of members of the National Legislature to *State offices*,"—Connecticut, New York, North Carolina, South Carolina, aye—4; New Jersey, Pennsylvania, Delaware, Virginia, Georgia, no—5; Massachusetts, Maryland, divided.

On the question for agreeing to the clause as amended,—Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—10; Connecticut, no—1.

On a question for making members of the National Legislature *ineligible* to any office under the National Government for the term of three years after ceasing to be members,—Maryland, aye—1; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no—10.

On the question for such *ineligibility* for one year,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina,

South Carolina, aye—8; New York, Georgia, no—2; Maryland divided.

On the question moved by Mr. PINCKNEY, for striking out “incapable of re-election into the first branch of the National Legislature for ——— years, and subject to recall,” agreed to, *nem. con.*²⁰⁸

On the question for striking out from the fifth Resolution the words requiring members of the Senatorial branch to be of the age of ——— years at least,—Connecticut, New Jersey, Pennsylvania, aye—3; Massachusetts, New York, Delaware, Maryland, Virginia, South Carolina, no—6; North Carolina, Georgia, divided.

On the question for filling the blank with “thirty years,” as the qualification, it was agreed to,—Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, aye—7; Connecticut, New Jersey, Delaware, Georgia, no—4.

Mr. SPAIGHT moved to fill the blank for the duration of the appointments to the second branch of the national Legislature, with the words “seven years.”

Mr. SHERMAN thought seven years too long. He grounded his opposition, he said, on the principle, that if they did their duty well, they would be re-elected; and if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred five years, which would be between the terms of the first branch and of the Executive.

Mr. PIERCE proposed three years. Seven years would raise an alarm. Great mischiefs have arisen in England from their Septennial Act, which was reprobated by most of their patriotic statesmen.

Mr. RANDOLPH was for the term of seven years. The democratic licentiousness of the State Legislatures proved the necessity of a firm Senate. The object of this second branch is, to control the democratic branch of the National Legislature. If it be not a firm body, the other branch, being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland, constituted on like principles, had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure of the Executive, will in all cases be necessary. A firmness and independence may be the more necessary, also, in this branch, as it ought to guard the Constitution against encroachments of the Executive, who will be apt to form combinations with the demagogues of the popular branch.

Mr. MADISON considered seven years as a term by no means too long. What we wished was, to give to the government that stability which was every where called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability, by the term of seven years. His fear was, that the popular branch would still be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The Constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the Senate of Maryland created just suspicions of danger from it. In some instances, perhaps, it may have erred by yielding to the House

of Delegates. In every instance of their opposition to the measures of the House of Delegates, they had had with them the suffrages of the most enlightened and impartial people of the other States, as well as of their own. In the States, where the Senates were chosen in the same manner as the other branches of the Legislature, and held their seats for four years, the institution was found to be no check whatever against the instabilities of the other branches. He conceived it to be of great importance that a stable and firm government, organized in the republican form, should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared, the time is not distant, when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

On the question for "seven years," as the term for the second branch,—New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye,—8; Connecticut, no—1; Massachusetts, (Mr. Gorham and Mr. King, aye; Mr. Gerry and Mr. Strong, no) New York, divided.²⁰⁷

Mr. BUTLER and Mr. RUTLEDGE proposed that the members of the second branch should be entitled to no salary or compensation for their services. On the question,*—Connecticut, Delaware, South Car-

* It is probable the votes here turned chiefly on the idea that if the salaries were not here provided for, the members would be paid by their respective States.

olina, aye—3; New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, no—7; Massachusetts, divided.

It was then moved, and agreed, that the clauses respecting the stipends and ineligibility of the second branch be the same as of the first branch,—Connecticut disagreeing to the ineligibility. It was moved and seconded, to alter the ninth Resolution, so as to read, “that the jurisdiction of the supreme tribunal shall be, to hear and determine, in the dernier resort, all piracies, felonies, &c.”

It was moved and seconded, to strike out, “all piracies and felonies on the high seas,” which was agreed to.

It was moved, and agreed, to strike out, “all captures from an enemy.”

It was moved, and agreed, to strike out, “other States,” and insert “two distinct States of the Union.”

It was moved, and agreed, to postpone the consideration of the ninth Resolution, relating to the Judiciary.

The Committee then rose, and the House adjourned.

WEDNESDAY, JUNE 13TH.

In Committee of the Whole,—The ninth Resolution being resumed,—

The latter part of the clause relating to the jurisdiction of the national tribunals, was struck out, *nem. con.*; in order to leave full room for their organization.

Mr. RANDOLPH and Mr. MADISON then moved the following resolution respecting a national Judiciary, viz.: "that the jurisdiction of the National Judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony." Agreed to.²⁰⁸

Mr. PINCKNEY and Mr. SHERMAN moved to insert, after the words, "one supreme tribunal," the words, "the judges of which to be appointed by the National Legislature."

Mr. MADISON objected to an appointment by the whole Legislature. Many of them are incompetent judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had, perhaps, assisted ignorant members in business of their own, or of their constituents, or used other winning means, would, without any of the essential qualifications for an expositor of the laws, prevail over a competitor not having these recommendations, but possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate; which, as a less numerous and more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

Mr. SHERMAN and Mr. PINCKNEY withdrew their motion, and the appointment by the Senate was agreed to, *nem. con.*

Mr. GERRY moved to restrain the Senatorial branch from originating money bills. The other branch was

more immediately the representatives of the people, and it was a maxim, that the people ought to hold the purse-strings. If the Senate should be allowed to originate such bills, they would repeat the experiment, till chance should furnish a set of Representatives in the other branch who will fall into their snares.

Mr. BUTLER saw no reason for such a discrimination. We were always following the British Constitution, when the reason of it did not apply. There was no analogy between the House of Lords and the body proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it, in favor of the other branch. And it will lead the latter into the practice of tacking other clauses to money bills.

Mr. MADISON observed, that the commentators on the British Constitution had not yet agreed on the reason of the restriction on the House of Lords, in money bills. Certain it was, there could be no similar reason in the case before us. The Senate would be the representatives of the people, as well as the first branch. If they should have any dangerous influence over it, they would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable set of men, it would be wrong to disable them from any preparation of the business, especially of that which was most important, and, in our republics, worse prepared than any other. The gentleman, in pursuance of his principle, ought to carry the restraint to the *amendment*, as well as the ori-

ginating of money bills; since an addition of a given sum would be equivalent to a distinct proposition of it.

Mr. KING differed from Mr. GERRY, and concurred in the objections to the proposition.

Mr. READ favored the proposition, but would not extend the restraint to the case of amendments.

Mr. PINCKNEY thinks the question premature. If the Senate should be formed on the *same* proportional representation as it stands at present, they should have equal power; otherwise, if a different principle should be introduced.

Mr. SHERMAN. As both branches must concur, there can be no danger, whichever way the Senate may be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business. The Senate bear their share of the taxes, and are also the representatives of the people. 'What a man does by another, he does by himself,' is a maxim. In Connecticut both branches can originate, in all cases, and it has been found safe and convenient. Whatever might have been the reason of the rule as to the House of Lords, it is clear that no good arises from it now even there.

General PINCKNEY. This distinction prevails in South Carolina, and has been a source of pernicious disputes between the two branches. The Constitution is now evaded by informal schedules of amendments, handed from the Senate to the other House.

Mr. WILLIAMSON wishes for a question, chiefly to prevent re-discussion. The restriction will have one advantage; it will oblige some member in the

lower branch to move, and people can then mark him.

On the question for excepting money-bills, as proposed by Mr. GERRY,—New York, Delaware, Virginia, aye—3; Massachusetts, Connecticut, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no—7.³⁰⁰

The Committee rose, and Mr. GORHAM made report, which was postponed till to-morrow, to give an opportunity for other plans to be proposed—the Report was in the words following :

1. Resolved, that it is the opinion of this Committee, that a national Government ought to be established, consisting of a supreme Legislative, Executive and Judiciary.

2. Resolved, that the National Legislature ought to consist of two branches.

3. Resolved, that the members of the first branch of the National Legislature ought to be elected by the people of the several States for the term of three years, to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the National Treasury: to be ineligible to any office established by a particular State, or under the authority of the United States, (except those peculiarly belonging to the functions of the first branch,) during the term of service, and under the national Government for the space of one year after its expiration.

4. Resolved, that the members of the second branch of the National Legislature ought to be chosen by the individual Legislatures; to be of the age of thirty years at least; to hold their offices for

a term sufficient to ensure their independence, namely, seven years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the National Treasury; to be ineligible to any office established by a particular State, or under the authority of the United States, (except those peculiarly belonging to the functions of the second branch,) during the term of service, and under the national Government for the space of one year after its expiration.

5. Resolved, that each branch ought to possess the right of originating acts.

6. Resolved, that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or any treaties subsisting under the authority of the Union.

7. Resolved, that the rights of suffrage in the first branch of the National Legislature, ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation, namely, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons, not comprehended in the

foregoing description, except Indians not paying taxes, in each State.

8. Resolved, that the right of suffrage in the second branch of the National Legislature, ought to be according to the rule established for the first.

9. Resolved, that a National Executive be instituted, to consist of a single person; to be chosen by the National Legislature, for the term of seven years; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second time; and to be removable on impeachment and conviction of malpractices or neglect of duty; to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the National Treasury.

10. Resolved, that the national Executive shall have a right to negative any legislative act, which shall not be afterwards passed by two-thirds of each branch of the national Legislature.

11. Resolved, that a national Judiciary be established, to consist of one supreme tribunal, the Judges of which shall be appointed by the second branch of the national Legislature, to hold their offices during good behaviour, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. Resolved, that the national Legislature be empowered to appoint inferior tribunals.

13. Resolved, that the jurisdiction of the national Judiciary shall extend to all cases which respect

the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

14. Resolved, that provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national Legislature less than the whole.

15. Resolved, that provision ought to be made for the continuance of Congress and their authorities and privileges, until a given day, after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

16. Resolved, that a republican constitution, and its existing laws, ought to be guaranteed to each State, by the United States.

17. Resolved, that provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

18. Resolved, that the Legislative, Executive and Judiciary powers within the several States, ought to be bound by oath to support the Articles of Union.

19. Resolved, that the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies recommended by the several Legislatures, to be expressly chosen by the people to consider and decide thereon.²¹⁹

THURSDAY, JUNE 14TH.

Mr. PATTERSON observed to the Convention, that it was the wish of several Deputations, particularly that of New Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contradistinguished from the reported plan. He said, they hoped to have such an one ready by to-morrow to be laid before the Convention: and the Convention adjourned that leisure might be given for the purpose.

FRIDAY, JUNE 15TH.

In Convention,—Mr. PATTERSON laid before the Convention the plan which he said several of the Deputations wished to be substituted in place of that proposed by Mr. RANDOLPH. After some little discussion of the most proper mode of giving it a fair deliberation, it was agreed, that it should be referred to a Committee of the Whole; and that, in order to place the two plans in due comparison, the other should be recommitted. At the earnest request of Mr. LANSING and some other gentlemen, it was also agreed that the Convention should not go into Committee of the Whole on the subject till to-morrow; by which delay the friends of the plan proposed by Mr. PATTERSON would be better prepared to explain and support it, and all would have an opportunity of taking copies.*

* This plan had been concerted among the Deputation, or members thereof, from Connecticut, New York, New Jersey, Delaware, and perhaps Mr. MARTIN, from

The propositions from New Jersey, moved by Mr. PATTERSON, were in the words following :

1. Resolved, that the Articles of Confederation ought to be so revised, corrected, and enlarged, as to render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union.

2. Resolved, that, in addition to the powers vested in the United States in Congress, by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandizes of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum or parchment; and by a postage on all letters or packages passing through the general post-office; to be applied to such Federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper; to pass acts for the regulation of trade and commerce, as well with foreign nations as

Maryland, who made with them a common cause, though on different principles. Connecticut and New York were against a departure from the principle of the Confederation, wishing rather to add a few new powers to Congress than to substitute a National Government. The States of New Jersey and Delaware were opposed to a National Government, because its patrons considered a proportional representation of the States as the basis of it. The eagerness displayed by the members opposed to a National Government, from these different motives, began now to produce serious anxiety for the result of the Convention. Mr. DICKINSON said to Mr. MADISON, "You see the consequence of pushing things too far. Some of the members from the small States wish for two branches in the General Legislature, and are friends to a good National Government; but we would sooner submit to foreign power, than submit to be deprived, in both branches of the legislature, of an equality of suffrage, and thereby be thrown under the domination of the larger States."

with each other; provided that all punishments, fines, forfeitures and penalties, to be incurred for contravening such acts, rules and regulations, shall be adjudged by the common law Judiciaries of the State in which any offence contrary to the true intent and meaning of such acts, rules, and regulations, shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the Superior common law Judiciary in such State; subject, nevertheless, for the correction of all errors, both in law and fact, in rendering judgment, to an appeal to the Judiciary of the United States.

3. Resolved, that whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that, if such requisitions be not complied with, in the time specified therein, to direct the collection thereof in the non-complying States; and for that purpose to devise and pass acts directing and authorizing the same; provided, that none of the powers hereby vested in the United States in Congress, shall be exercised without the consent of at least ——— States; and in that proportion, if the number of confederated States should hereafter be increased or diminished.

4. Resolved, that the United States in Congress be authorized to elect a Federal Executive, to consist of ——— persons, to continue in office for the term of ——— years; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the Executive at the time of such increase or diminution; to be paid out of the Federal treasury; to be incapable of holding any other office or appointment during their time of service, and for ——— years thereafter: to be ineligible a second time, and removeable by Congress, on application by a majority of the Executives of the several States; that the Executive, besides their general authority to execute the Federal acts, ought to appoint all Federal officers not otherwise provided for, and to direct all military operations; provided, that none of the persons composing the Federal Executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as General, or in any other capacity.

5. Resolved, that a Federal Judiciary be established, to consist of a supreme tribunal, the Judges of which to be appointed by the Executive, and to hold their offices during good behaviour; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the Judiciary so established shall have authority to hear and determine, in the first instance, on

on all impeachments of Federal officers; and, by way of appeal, in the dernier resort, in all cases touching the rights of ambassadors; in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be interested; in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the Federal revenue: that none of the Judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for ——— thereafter.

6. Resolved, that all acts of the United States in Congress, made by virtue and in pursuance of the powers hereby, and by the Articles of Confederation, vested in them, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective States, so far forth as those acts or treaties shall relate to the said States or their citizens; and that the Judiciary of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding: and that if any State, or any body of men in any State, shall oppose or prevent the carrying into execution such acts or treaties, the Federal Executive shall be authorized to call forth the power of the confederated States, or so much thereof as may be necessary, to enforce and compel an obedience to such acts, or an observance of such treaties.)

7. Resolved, that provision be made for the admission of new States into the Union.

8. Resolved, that the rule for naturalization ought to be same in every State.

9. Resolved, that a citizen of one State committing an offence in another State of the Union, shall be deemed guilty of the same offence as if it had been committed by a citizen of the State in which the offence was committed.*²⁷¹

Adjourned.

SATURDAY, JUNE 16TH.

In Committee of the Whole, on the Resolutions proposed by Mr. PATTERSON and Mr. RANDOLPH,—Mr. LANSING called for the reading of the first Resolution of each plan, which he considered as involving principles directly in contrast. That of Mr. PATTERSON, says he, sustains the sovereignty of the respective States, that of Mr. RANDOLPH destroys it. The latter requires a negative on all the laws of the particular States, the former only certain general power for the general good. The plan of Mr. RANDOLPH in short absorbs all power, except what may be exercised in the little local matters of the States which are not ob-

* This copy of Mr. Patterson's propositions varies in a few clauses from that in the printed Journal furnished from the papers of Mr. Brearly, a colleague of Mr. Patterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the Journal is not entirely correct, is shown by the ensuing speech of Mr. Wilson (June 16), in which he refers to the mode of removing the Executive "by impeachment and conviction" as a feature in the Virginia plan forming one of its contrasts to that of Mr. Patterson, which proposed a removal "on application of a majority of the Executives of the States." In the copy printed in the Journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment, does not appear.

jects worthy of the supreme cognizance. He grounded his preference of Mr. PATTERSON's plan, chiefly, on two objections to that of Mr. RANDOLPH,—first, want of power in the Convention to discuss and propose it; secondly, the improbability of its being adopted.

1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a Federal nature, and having for their basis the Confederacy in being. The acts of Congress, the tenor of the acts of the States, the commissions produced by the several Deputations, all proved this. And this limitation of the power to an amendment of the Confederacy marked the opinion of the States, that it was unnecessary and improper to go further. He was sure that this was the case with his State. New York would never have concurred in sending Deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the States, and a National Government.

2. Was it probable that the States would adopt and ratify a scheme, which they had never authorized us to propose, and which so far exceeded what they regarded as sufficient? We see by their several acts, particularly in relation to the plan of revenue proposed by Congress in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place? To rely on any change which is hereafter to take place in the sentiments of the people, would be trusting to too great an uncertainty. We know only what their present sentiments are. And it is in vain to propose what will not accord with these. The

States will never feel a sufficient confidence in a General Government, to give it a negative on their laws. The scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

Mr. PATTERSON said, as he had on a former occasion given his sentiments on the plan proposed by Mr. RANDOLPH, he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded,—first, with the powers of the Convention; secondly, with the sentiments of the people. If the Confederacy was radically wrong, let us return to our States, and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no confederacy at present exists, it cannot be denied that all the States stand on the footing of equal sovereignty. All, therefore, must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a Federal compact actually exists, and consult the articles of it, we still find an equal sovereignty to be the basis of it. He reads the fifth Article of the Confederation, giving each State a vote; and the thirteenth, declaring that no alteration shall be made without unanimous consent. This is the

nature of all treaties. What is unanimously done, must be unanimously undone. It was observed (by Mr. WILSON) that the larger States gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back? Can the donor resume his gift without the consent of the donee? This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser States. The larger States acceded readily to the Confederacy. It was the small ones that came in reluctantly and slowly. New Jersey and Maryland were the two last; the former objecting to the want of power in Congress over trade; both of them to the want of power to appropriate the vacant territory to the benefit of the whole. If the sovereignty of the States is to be maintained, the representatives must be drawn immediately from the States, not from the people; and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the States into hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the citizens of Massachusetts, Pennsylvania and Virginia accede to it. It will be objected, that coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the States, or from the individuals; and according to his plan it may be exerted on individuals as well as according to that of Mr. RANDOLPH. A distinct Executive and Judiciary also were equally provided by

his plan. It is urged, that two branches in the Legislature are necessary. Why? For the purpose of a check. But the reason for the precaution is not applicable to this case. Within a particular State, where party heats prevail, such a check may be necessary. In such a body as Congress it is less necessary; and, besides, the Delegations of the different States are checks on each other. Do the people at large complain of Congress? No. What they wish is, that Congress may have more power. If the power now proposed be not enough, the people hereafter will make additions to it. With proper powers Congress will act with more energy and wisdom than the proposed National Legislature; being fewer in number, and more secreted and refined by the mode of election. The plan of Mr. RANDOLPH will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be one hundred and eighty. Add to it half as many for the other branch, and you have two hundred and seventy members, coming one at least a year, from the most distant as well as the most central parts of the Republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? By enlarging the powers of Congress, the greatest part of this expense will be saved, and all purposes will be answered. At least a trial ought to be made.

Mr. WILSON entered into a contrast of the principal points of the two plans, so far, he said, as there had been time to examine the one last proposed. These points were:—1. In the Virginia plan there

are *two*, and in some degree three, branches in the Legislature; in the plan from New Jersey there is to be a *single* Legislature only. 2. Representation of the people at large is the basis of one; the State Legislatures the pillars of the other. 3. Proportional representation prevails in one, equality of suffrage in the other. 4. A single Executive Magistrate is at the head of the one; a plurality is held out in the other. 5. In the one, a majority of the people of the United States must prevail; in the other, a minority may prevail. 6. The National Legislature is to make laws in all cases to which the separate States are incompetent, &c.; in place of this, Congress are to have additional power in a few cases only. 7. A negative on the laws of the States; in place of this, coercion to be substituted. 8. The Executive to be removable on impeachment and conviction, in one plan; in the other, to be removable at the instance of a majority of the Executives of the States. 9. Revision of the laws provided for, in one; no such check in the other. 10. Inferior national tribunals, in one; none such in the other. 11. In the one, jurisdiction of national tribunals to extend, &c.; an appellate jurisdiction only allowed in the other. 12. Here, the jurisdiction is to extend to all cases affecting the national peace and harmony; there, a few cases only are marked out. 13. Finally, the ratification is, in this, to be by the people themselves; in that, by the legislative authorities, according to the thirteenth Article of the Confederation.

With regard to the *power of the Convention*, he conceived himself authorized to *conclude nothing*, but

to be at liberty to *propose any thing*. In this particular, he felt himself perfectly indifferent to the two plans.

With regard to the sentiments of the people, he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved were commonly mistaken for the general voice. He could not persuade himself that the State Governments and sovereignties were so much the idols of the people, nor a National Government so obnoxious to them, as some supposed. Why should a National Government be unpopular? Has it less dignity? Will each citizen enjoy under it less liberty or protection? Will a citizen of *Delaware* be degraded by becoming a citizen of the *United States*? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their governments? No, sir. It is from the national councils that relief is expected. For these reasons, he did not fear that the people would not follow us into a National Government; and it will be a further recommendation of Mr. RANDOLPH's plan, that it is to be submitted to *them*, and not to the *Legislatures*, for ratification.

Proceeding now to the first point on which he had contrasted the two plans, he observed, that, anxious as he was for some augmentation of the Federal powers, it would be with extreme reluctance, indeed, that he could ever consent to give powers to Congress. He had two reasons, either of which was sufficient,—first, Congress, as a legislative body, does not stand on the people; secondly, it is a *single* body.

1. He would not repeat the remarks he had formerly made on the principles of representation. He would only say, that an inequality in it has ever been a poison contaminating every branch of government. In Great Britain, where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of justice, the judges of which are neither appointed nor paid by a venal parliament. The political liberty of that nation, owing to the inequality of representation, is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that country and ours, at present. But it is a lesson we ought not to disregard, that the smallest bodies in Great Britain are notoriously the most corrupt. Every other source of influence must also be stronger in small than in large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added, that it was not Holland, but one of the *smallest* of them. There are facts among ourselves which are known to all. Passing over others, we will only remark that the *Impost*, so anxiously wished for by the public, was defeated not by any of the *larger* States in the Union.

2. *Congress is a single Legislature.* Despotism comes on mankind in different shapes, sometimes in an Executive, sometimes in a military one. Is there no danger of a Legislative despotism? Theory and practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and inde-

pendent branches. In a single House there is no check, but the inadequate one, of the virtue and good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the Whole. It vested the Executive powers in a single magistrate. The plan of New Jersey, vested them in a plurality. In order to control the Legislative authority, you must divide it. In order to control the Executive you must unite it. One man will be more responsible than three. Three will contend among themselves, till one becomes the master of his colleagues. In the triumvirates of Rome, first, Cæsar, then Augustus, are witnesses of this truth. The Kings of Sparta, and the Consuls of Rome, prove also the factious consequences of dividing the Executive magistracy. Having already taken up so much time, he would not, he said, proceed to any of the other points. Those on which he had dwelt are sufficient of themselves; and on the decision of them the fate of the others will depend.

Mr. PINCKNEY.²² The whole comes to this, as he conceived. Give New Jersey an equal vote, and she will dismiss her scruples, and concur in the National system. He thought the Convention authorized to go any length, in recommending, which they found necessary to remedy the evils which produced this Convention.

Mr. ELLSWORTH proposed, as a more distinctive form of collecting the mind of the Committee on the subject, "that the Legislative power of the United States should remain in Congress." This was not seconded, though it seemed better calculated for

the purpose than the first proposition of Mr. PATTERSON, in place of which Mr. ELLSWORTH wished to substitute it.

Mr. RANDOLPH was not scrupulous on the point of power. When the salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary. He painted in strong colours the imbecility of the existing confederacy, and the danger of delaying a substantial reform. In answer to the objection drawn from the sense of our constituents, as denoted by their acts relating to the Convention and the objects of their deliberation, he observed, that, as each State acted separately in the case, it would have been indecent for it to have charged the existing Constitution, with all the vices which it might have perceived in it. The first State that set on foot this experiment would not have been justified in going so far, ignorant as it was of the opinion of others, and sensible as it must have been of the uncertainty of a successful issue to the experiment. There are reasons certainly of a peculiar nature, where the ordinary cautions must be dispensed with; and this is certainly one of them. He would not, as far as depended on him, leave any thing that seemed necessary, undone. The present moment is favorable, and is probably the last that will offer.

The true question is, whether we shall adhere to the Federal plan, or introduce the National plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes by which the end of a General Government can be attained: the first, by coercion, as proposed

by Mr. PATTERSON's plan; the second, by real legislation, as proposed by the other plan. Coercion he pronounced to be *impracticable, expensive, cruel to individuals*. It tended, also, to habituate the instruments of it to shed the blood, and riot in the spoils, of their fellow citizens, and consequently trained them up for the service of ambition. We must resort therefore to a *national legislation over individuals*; for which Congress are unfit. To vest such power in them would be blending the Legislative with the Executive, contrary to the received maxim on this subject. If the union of these powers, heretofore, in Congress has been safe, it has been owing to the general impotency of that body. Congress are, moreover, not elected by the people, but by the Legislatures, who retain even a power of recall. They have therefore no will of their own; they are a mere diplomatic body, and are always obsequious to the views of the States, who are always encroaching on the authority of the United States. A provision for harmony among the States, as in trade, naturalization, &c.; for crushing rebellion, whenever it may rear its crest; and for certain other general benefits, must be made. The powers for these purposes can never be given to a body inadequate as Congress are in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for notwithstanding what has been said to the contrary, his own experience satisfied him, that a rooted distrust of Congress pretty generally prevailed. A National Government alone, properly constituted, will answer the purpose; and he begged it to be considered that

the present is the last moment for establishing one. After this select experiment, the people will yield to despair."²³

The Committee rose, and the House adjourned.

MONDAY, JUNE 18TH.

In Committee of the Whole, on the propositions of Mr. PATTERSON and Mr. RANDOLPH,—On motion of Mr. DICKINSON, to postpone the first Resolution in Mr. PATTERSON's plan, in order to take up the following, viz.: "that the Articles of Confederation ought to be revised and amended, so as to render the Government of the United States adequate to the exigencies, the preservation, and the prosperity of the Union,"—the postponement was agreed to by ten States; Pennsylvania, divided.

Mr. HAMILTON had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities, age and experience, rendered him unwilling to bring forward ideas dissimilar to theirs; and partly from his delicate situation with respect to his own State, to whose sentiments, as expressed by his colleagues, he could by no means accede. The crisis, however, which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety and happiness. He was obliged, therefore, to declare himself unfriendly to both plans. He was particularly opposed to that from New Jersey, being fully convinced, that no amendment of the Confed-

eration, leaving the States in possession of their sovereignty, could possibly answer the purpose. On the other hand, he confessed he was much discouraged by the amazing extent of country, in expecting the desired blessings from any general sovereignty that could be substituted. As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions and reasonings too subtle. A *federal* government he conceived to mean an association of independent communities into one. Different confederacies have different powers, and exercise them in different ways. In some instances, the powers are exercised over collective bodies, in others, over individuals, as in the German Diet; and among ourselves, in cases of piracy. Great latitude, therefore, must be given to the signification of the term. The plan last proposed departs, itself, from the *federal* idea, as understood by some, since it is to operate eventually on individuals. He agreed, moreover, with the Honorable gentleman from Virginia (Mr. RANDOLPH), that we owed it to our country, to do, on this emergency, whatever we should deem essential to its happiness. The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said, that the *States* cannot *ratify* a plan not within the purview of the Article of the Confederation providing for alterations and amendments. But may not the *States* themselves, in which no constitutional authority equal to this purpose exists in the Legisla-

tures, have had in view a reference to the people at large? In the Senate of New York, a proviso was moved, that no act of the Convention should be binding until it should be referred to the people and ratified; and the motion was lost by a single voice only, the reason assigned against it being, that it might possibly be found an inconvenient shackle.

The great question is, what provision shall we make for the happiness of our country? He would first make a comparative examination of the two plans—prove that there were essential defects in both—and point out such changes as might render a *national one* efficacious. The great and essential principles necessary for the support of government are. 1. An active and constant interest in supporting it. This principle does not exist in the States, in favor of the Federal Government. They have evidently in a high degree, the *esprit de corps*. They constantly pursue internal interests adverse to those of the whole. They have their particular debts, their particular plans of finance, &c. All these, when opposed to, invariably prevail over, the requisitions and plans of Congress. 2. The love of power. Men love power. The same remarks are applicable to this principle. The States have constantly shown a disposition rather to regain the powers delegated by them, than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the control of the General Government. It may be remarked, too, that the citizens have not that anxiety to prevent a dissolution of the General Government, as of the particular governments. A dissolu-

tion of the latter would be fatal; of the former, would still leave the purposes of government attainable to a considerable degree. Consider what such a State as Virginia will be in a few years, a few compared with the life of nations. How strongly will it feel its importance and self-sufficiency! 3. An habitual attachment of the people. The whole force of this tie is on the side of the State Government. Its sovereignty is immediately before the eyes of the people; its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize and endear a government to a people, are dispensed to them. 4. *Force*, by which may be understood a *coercion of laws* or *coercion of arms*. Congress have not the former, except in few cases. In particular States, this coercion is nearly sufficient; though he held it, in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Massachusetts is now feeling this necessity, and making provision for it. But how can this force be exerted on the States collectively? It is impossible. It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose; the confusion will increase; and a dissolution of the Union will ensue. 5. *Influence*,—he did not mean corruption, but a dispensation of those regular honors and emoluments which produce an attachment to the government. Almost all the weight of these is on the side of the States; and must continue so as long as the States continue to exist. All the passions, then, we see, of avarice, ambition, interest, which govern most

individuals, and all public bodies, fall into the current of the States, and do not flow into the stream of the General Government. The former, therefore, will generally be an overmatch for the General Government, and render any confederacy in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphictyonic Council had, it would seem, ample powers for general purposes. It had, in particular, the power of fining and using force against, delinquent members. What was the consequence? Their decrees were mere signals of war. The Phocian war is a striking example of it. Philip at length, taking advantage of their disunion, and insinuating himself into their councils, made himself master of their fortunes. The German confederacy affords another lesson. The authority of Charlemagne seemed to be as great as could be necessary. The great feudal chiefs, however, exercising their local sovereignties, soon felt the spirit, and found the means, of encroachments, which reduced the Imperial authority to a nominal sovereignty. The Diet has succeeded, which, though aided by a Prince at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of confederated governments. Other examples instruct us in the same truth. The Swiss Cantons have scarce any union at all, and have been more than once at war with one another. How then are all these evils to be avoided? Only by such a complete sovereignty in the General Government as will turn all the strong principles and passions above-mentioned on its side. Does the scheme of New Jersey produce

this effect? Does it afford any substantial remedy whatever? On the contrary it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress, but this will not be sufficient. The balance can only be supplied by requisitions; which experience proves cannot be relied on. If States are to deliberate on the mode, they will also deliberate on the object, of the supplies; and will grant or not grant, as they approve or disapprove of it. The delinquency of one will invite and countenance it in others. Quotas too, must, in the nature of things, be so unequal, as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia; France, or England, with other countries of Europe; Pennsylvania with North Carolina,—will the relative pecuniary abilities, in those instances, correspond with the relative value of land? Take numbers of inhabitants for the rule, and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different countries render the first object a precarious measure of wealth. Much depends, too, on *situation*. Connecticut, New Jersey, and North Carolina, not being commercial States, and contributing to the wealth of the commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will, and must, fail in their duty. Their example will be followed,—and the union itself be dissolved. Whence, then, is the national revenue to be drawn? From commerce; even from

exports, which, notwithstanding the common opinion, are fit objects of moderate taxation; from excise, &c., &c.—These, though not equal, are less unequal than quotas. Another destructive ingredient in the plan is that equality of suffrage which is so much desired by the small States. It is not in human nature that Virginia and the large States should consent to it; or, if they did, that they should long abide by it. It shocks too much all ideas of justice, and every human feeling. Bad principles in a government, though slow, are sure in their operation, and will gradually destroy it. A doubt has been raised whether Congress at present have a right to keep ships or troops in time of peace. He leans to the negative. Mr. PATTERSON's plan provides no remedy. If the powers proposed were adequate, the organization of Congress is such, that they could never be properly and effectually exercised. The members of Congress, being chosen by the States and subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The General power, whatever be its form, if it preserves itself, must swallow up the state powers. Otherwise, it will be swallowed up by them. It is against all the principles of a good government, to vest the requisite powers in such a body as Congress. Two sovereignties cannot co-exist within the same limits. Giving powers to Congress must eventuate in a bad government, or in no government. The plan of New Jersey, therefore, will not do. What, then, is to be done? Here he was embarrassed. The ex-

tent of the country to be governed discouraged him. The expense of a General Government was also formidable; unless there were such a diminution of expense on the side of the State Governments, as the case would admit. If they were extinguished, he was persuaded that great economy might be obtained by substituting a General Government. He did not mean, however, to shock the public opinion by proposing such a measure. On the other hand, he saw no *other* necessity for declining it. They are not necessary for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities, he was aware, would be necessary. There must be district tribunals; corporations for local purposes. But *cui bono* the vast and expensive apparatus now appertaining to the States? The only difficulty of a serious nature which occurred to him, was that of drawing representatives from the extremes to the centre of the community. What inducements can be offered that will suffice? The moderate wages for the first branch could only be a bait to little demagogues. Three dollars, or thereabouts, he supposed, would be the utmost. The Senate, he feared, from a similar cause, would be filled by certain undertakers, who wish for particular offices under the government. This view of the subject almost led him to despair that a republican government could be established over so great an extent. He was sensible, at the same time, that it would be unwise to propose one of any other form. In his private opinion, he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the British Government was

the best in the world: and that he doubted much whether any thing short of it would do in America. He hoped gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place, and was still going on. It was once thought that the power of Congress was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming against the vices of democracy. This progress of the public mind led him to anticipate the time, when others as well as himself, would join in the praise bestowed by Mr. NECKAR on the British Constitution, namely, that it is the only government in the world "which unites public strength with individual security." In every community where industry is encouraged, there will be a division of it into the few and the many. Hence, separate interests will arise. There will be debtors and creditors, &c. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both, therefore, ought to have the power, that each may defend itself against the other. To the want of this check we owe our paper-money, instalment laws, &c. To the proper adjustment of it the British owe the excellence of their Constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the Crown or

of the Commons. No temporary Senate will have firmness enough to answer the purpose. The Senate of Maryland which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission, they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. He appealed to the gentlemen from the New England States, whether experience had not there verified the remark. As to the Executive, it seemed to be admitted that no good one could be established on republican principles. Was not this giving up the merits of the question; for can there be a good government without a good Executive? The English model was the only good one on this subject. The hereditary interest of the King was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad; and at the same time was both sufficiently independent and sufficiently controlled, to answer the purpose of the institution at home. One of the weak sides of republics was their being liable to foreign influence and corruption. Men of little character, acquiring

great power, become easily the tools of intermeddling neighbours. Sweden was a striking instance. The French and English had each their parties during the late revolution, which was effected by the predominant influence of the former. What is the inference from all these observations? That we ought to go as far, in order to attain stability and permanency, as republican principles will admit. Let one branch of the Legislature hold their places for life, or at least during good behaviour. Let the Executive, also, be for life. He appealed to the feelings of the members present, whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to ensure the services of the best citizens. On this plan, we should have in the Senate a permanent will, a weighty interest, which would answer essential purposes. But is this a republican government, it will be asked? Yes, if all the magistrates are appointed and vacancies are filled by the people, or a process of election originating with the people. He was sensible that an Executive, constituted as he proposed would have in fact but little of the power and independence that might be necessary. On the other plan of appointing him for seven years, he thought the Executive ought to have but little power. He would be ambitious, with the means of making creatures; and as the object of his ambition would be to *prolong* his power, it is probable that in case of war he would avail himself of the emergency, to evade or refuse a degradation from his place. An Executive for life has not this motive for forgetting his fidelity, and will therefore be a safer deposi-

tory of power. It will be objected, probably, that such an Executive will be an *elective monarch*, and will give birth to the tumults which characterize that form of government. He would reply, that *monarch* is an indefinite term. It marks not either the degree or duration of power. If this Executive magistrate would be a monarch for life, the other proposed by the Report from the Committee of the Whole would be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed by judicious writers, that elective monarchies would be the best if they could be guarded against the *tumults* excited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He thought this character of elective monarchies had been taken rather from particular cases, than from general principles. The election of Roman Emperors was made by the *army*. In *Poland* the election is made by great rival *princes*, with independent power, and ample means of raising commotions. In the German Empire, the appointment is made by the Electors and Princes, who have equal motives and means for exciting cabals and parties. Might not such a mode of election be devised among ourselves, as will defend the community against these effects in any dangerous degree? Having made these observations, he would read to the Committee a sketch of a plan which he should prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he

would ask, will the people adopt the other plan? At present they will adopt neither. But he sees the Union dissolving, or already dissolved—he sees evils operating in the States which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made, and is still going on, in the public mind. He thinks, therefore, that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of Mr. RANDOLPH would place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to the Committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. RANDOLPH, in the proper stages of its future discussion. He reads his sketch in the words following: to wit.

“I. The supreme Legislative power of the United States of America to be vested in two different bodies of men; the one to be called the Assembly, the other the Senate; who together shall form the Legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

“II. The Assembly to consist of persons elected by the people to serve for three years.

“III. The Senate to consist of persons elected to serve during good behaviour; their election to be made by electors chosen for that purpose by the people. In order to this, the States to be divided into election districts. On the death, removal or re-

signation of any Senator, his place to be filled out of the district from which he came.

“IV. The supreme Executive authority of the United States to be vested in a Governor, to be elected to serve during good behaviour; the election to be made by Electors chosen by the people in the Election Districts aforesaid. The authorities and functions of the Executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have, with the advice and approbation of the Senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the Departments of Finance, War, and Foreign Affairs; to have the nomination of all other officers, (ambassadors to foreign nations included,) subject to the approbation or rejection of the Senate; to have the power of pardoning all offences except treason, which he shall not pardon without the approbation of the Senate.

“V. On the death, resignation, or removal of the Governor, his authorities to be exercised by the President of the Senate till a successor be appointed.

“VI. The Senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the Departments of Finance, War, and Foreign Affairs.

“VII. The supreme Judicial authority to be vested in Judges, to hold their offices during good behaviour, with adequate and permanent salaries. This court to have original jurisdiction in all causes

of capture, and an appellate jurisdiction in all causes in which the revenues of the General Government, or the citizens of foreign nations, are concerned.

“VIII. The Legislature of the United States to have power to institute courts in each State for the determination of all matters of general concern.

“IX. The Governor, Senators, and all officers of the United States, to be liable to impeachment for mal-, and corrupt conduct; and upon conviction to be removed from office, and disqualified for holding any place of trust or profit: all impeachments to be tried by a Court to consist of the Chief ———, or Judge of the Superior Court of Law of each State, provided such Judge shall hold his place during good behaviour and have a permanent salary.

“X. All laws of the particular States contrary to the Constitution or laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governor or President of each State shall be appointed by the General Government, and shall have a negative upon the laws about to be passed in the State of which he is the Governor or President.

“XI. No State to have any forces land or naval; and the militia of all the States to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them.”

On these several articles he entered into explanatory observations* corresponding with the principles of his introductory reasoning.²¹⁴

The Committee rose, and the House adjourned.

* The speech introducing the plan, as above taken down and written out, was

TUESDAY, JUNE 19TH.

In Committee of the Whole, on the propositions of Mr. PATTERSON,—The substitute offered yesterday by Mr. DICKINSON being rejected by a vote now taken on it,—Connecticut, New York, New Jersey, Delaware, aye—4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—6; Maryland, divided,—Mr. PATTERSON's plan was again at large before the Committee.

Mr. MADISON. Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a *federal* plan. To what had been answered by others, he would only add, that neither of the characteristics attached to a *federal* plan would support this objection. One characteristic was, that in a *federal* government the power was exercised not on the people *individually*, but on the people *collectively*, on the *States*. Yet in some instances, as in piracies, captures, &c., the existing Confederacy, and in many instances the amendments to it proposed by Mr. PATTERSON, must operate immediately on individuals. The other characteristic was, that a *federal* government derived its appointments not immediately from the

seen by Mr. HAMILTON, who approved its correctness, with one or two verbal changes, which were made as he suggested. The explanatory observations which did not immediately follow, were to have been furnished by Mr. H. who did not find leisure at the time to write them out, and they were not obtained. Judge Yates, in his notes, appears to have consolidated the explanatory with the introductory observations of Mr. HAMILTON (under date of June 19th, a typographical error). It was in the former, Mr. MADISON observed, that Mr. HAMILTON, in speaking of popular governments, however modified, made the remark attributed to him by Judge Yates, that they were "*but pork still, with a little change of sauce.*"

people, but from the States which they respectively composed. Here, too, were facts on the other side. In two of the States, Connecticut and Rhode Island, the Delegates to Congress were chosen, not by the Legislatures, but by the people at large; and the plan of Mr. PATTERSON intended no change in this particular.

It had been alleged (by Mr. PATTERSON), that the Confederation, having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the Federal Union as analogous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact by a part of the society, would certainly absolve the other part from their obligations to it. If the breach of *any* article by *any* of the parties, does not set the others at liberty, it is because the contrary is *implied* in the compact itself, and particularly by that law of it which gives an indefinite authority to the majority to bind the whole, in all cases. This latter circumstance shows, that we are not to consider the Federal Union as analogous to the social compact of individuals: for if it were so, a majority would have a right to bind the rest, and even to form a new Constitution for the whole; which the gentleman from New Jersey

would be among the last to admit. If we consider the Federal Union as analagous, not to the social compacts among individual men, but to the Conventions among individual States, what is the doctrine resulting from these Conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated, that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war which is in general understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the Union to discharge its duty. He observed, that the violations of the Federal Articles had been numerous and notorious. Among the most notorious was an act of New Jersey herself; by which she *expressly refused* to comply with a constitutional requisition of Congress, and yielded no further to the expostulations of their Deputies, than barely to rescind her vote of refusal, without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper, however, that the true nature of the existing Confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

Proceeding to the consideration of Mr. PATTERSON's plan, he stated the object of a proper plan to be twofold,—first, to preserve the Union ; secondly, to provide a Government that will remedy the evils felt by the States, both in their united and individual capacities. Examine Mr. PATTERSON's plan, and say whether it promises satisfaction in these respects.

1. Will it prevent the violations of the law of nations and of treaties which, if not prevented, must involve us in the calamities of foreign wars? The tendency of the States to these violations has been manifested in sundry instances. The files of Congress contain complaints, already, from almost every nation with which treaties have been formed. Hitherto indulgence has been shown to us. This cannot be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities. It ought, therefore, to be effectually provided, that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the States as uncontrolled as ever.

2. Will it prevent encroachments on the Federal authority? A tendency to such encroachments has been sufficiently exemplified among ourselves, as well as in every other confederated republic, ancient and modern. By the Federal Articles, transactions with the Indians appertain to Congress, yet in several instances the States have entered into treaties and wars with them. In like manner, no

two or more States can form among themselves any treaties, &c., without the consent of Congress: yet Virginia and Maryland, in one instance—Pennsylvania and New Jersey, in another—have entered into compacts without previous application or subsequent apology. No State, again, can of right raise troops in time of peace without the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Massachusetts, notwithstanding, the most powerful member of the Union, already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Congress of her intentions? In fine, have we not seen the public land dealt out to Connecticut to bribe her acquiescence in the decree constitutionally awarded against her claim on the territory of Pennsylvania? For no other possible motive can account for the policy of Congress in that measure. If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphietyonic and Achæan confederacies, among the ancients, and the Helvetic, Germanic, and Belgic, among the moderns; tracing their analogy to the United States in the constitution and extent of their federal authorities; in the tendency of the particular members to usurp on these authorities, and to bring confusion and ruin on the whole. He observed, that the plan of Mr. PATTERSON, besides omitting a control over the States, as a general defence of the Federal prerogatives, was particularly defective in two of its provisions. In the first place, its ratifica-

tion was not to be by the people at large ; but by the *Legislatures*. It could not, therefore, render the acts of Congress, in pursuance of their powers, even legally *paramount* to the acts of the States. And in the second place, it gave to the Federal tribunal an appellate jurisdiction only even in the criminal cases enumerated. The necessity of any such provision supposed a danger of undue acquittal in the State tribunals,—of what avail would an appellate tribunal be after an acquittal ? Besides, in most, if not all, of the States, the Executives have, by their respective *Constitutions*, the right of pardoning,—how could this be taken from them by a legislative ratification only ?

3. Will it prevent trespasses of the States on each other ? Of these enough has been already seen. He instanced acts of Virginia and Maryland, which gave a preference to their own citizens in cases where the citizens of other States are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper-money, and other kindred measures, as also aggressions. The States, relatively to one another, being each of them either debtor or creditor, the creditor States must suffer unjustly from every emission by the debtor States. We have seen retaliating acts on the subject, which threatened danger, not to the harmony only, but the tranquillity of the Union. The plan of Mr. PATTERSON, not giving even a negative on the acts of the States, left them as much at liberty as ever to execute their unrighteous projects against each other.

4. Will it secure the internal tranquillity of the States themselves ? The insurrections in Massachu-

setts admonished all the States of the danger to which they were exposed. Yet the plan of Mr. PATTERSON contained no provisions for supplying the defect of the Confederation on this point. According to the republican theory, indeed, right and power being both vested in the majority, are held to be synonymous. According to fact and experience, a minority may, in an appeal to force, be an overmatch for the majority;—in the first place, if the minority happen to include all such as possess the skill and habits of military life, with such as possess the great pecuniary resources, one-third may conquer the remaining two-thirds; in the second place, one-third of those who participate in the choice of rulers, may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, and who, for obvious reasons, must be more ready to join the standard of sedition than that of established government; and, in the third place, where slavery exists, the republican theory becomes still more fallacious.

5. Will it secure a good internal legislation and administration to the particular States? In developing the evils which vitiate the political system of the United States, it is proper to take into view those which prevail within the States individually, as well as those which affect them collectively; since the former indirectly affect the whole, and there is great reason to believe that the pressure of them had a full share in the motives which produced the present Convention. Under this head he enumerated and animadverted on,—first, the multiplicity of the laws passed by the several States; secondly,

the mutability of their laws; thirdly, the injustice of them; and fourthly, the impotence of them;—observing that Mr. PATTERSON's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigencies of the community.

6. Will it secure the Union against the influence of foreign powers over its members? He pretended not to say that any such influence had yet been tried: but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practised among the Amphictyonic confederates, first by the Kings of Persia, and afterwards fatally, by Philip of Macedon; among the Achæans, first by Macedon, and afterwards, no less fatally, by Rome; among the Swiss, by Austria, France and the lesser neighbouring powers; among the members of the Germanic body, by France, England, Spain and Russia; and in the Belgic republic, by all the great neighbouring powers. The plan of Mr. PATTERSON, not giving to the general councils any negative on the will of the particular States, left the door open for the like pernicious machinations among ourselves.

7. He begged the smaller States, which were most attached to Mr. PATTERSON's plan, to consider the situation in which it would leave them. In the first place they would continue to bear the whole expense of maintaining their Delegates in Congress. It ought not to be said, that, if they were willing to bear this burthen, no others had a right to complain. As far as it led the smaller States to forbear keeping up a representation, by which the public business

was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one, that the public business had been frequently delayed by this cause; and that the States most frequently unrepresented in Congress were not the larger States. He reminded the Convention of another consequence of leaving on a small State the burden of maintaining a representation in Congress. During a considerable period of the war, one of the Representatives of Delaware, in whom alone, before the signing of the Confederation, the entire vote of that State, and after that event one half of its vote, frequently resided, was a citizen and resident of Pennsylvania, and held an office in his own State incompatible with an appointment from it to Congress. During another period, the same State was represented by three Delegates, two of whom were citizens of Pennsylvania, and the third a citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting Delegates from their own State. But whatever might have been the cause, was not in effect the vote of one State doubled, and the influence of another increased by it?²²⁵ In the second place the coercion on which the efficacy of the plan depends can never be exerted but on themselves. The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphictyonic confederates; and the ban of the German Empire. It was the cobweb which could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in

which they would remain, in case their pertinacious adherence to an inadmissible plan should prevent the adoption of any plan. The contemplation of such an event was painful ; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the union of the States be dissolved, and one of two consequences must happen. Either the States must remain individually independent and sovereign ; or two or more confederacies must be formed among them. In the first event, would the small States be more secure against the ambition and power of their larger neighbours, than they would be under a General Government pervading with equal energy every part of the Empire, and having an equal interest in protecting every part against every other part ? In the second, can the smaller expect that their larger neighbours would confederate with them on the principle of the present Confederacy, which gives to each member an equal suffrage ; or that they would exact less severe concessions from the smaller States, than are proposed in the scheme of Mr. RANDOLPH.

The great difficulty lies in the affair of representation ; and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from New Jersey, (Mr. BREARLY and Mr. PATTERSON,) that it would not be *just to allow Virginia*, which was sixteen times as large as Delaware, an equal vote only. Their language was, that it would not be *safe for Delaware* to allow Virginia sixteen times as many votes. The expedient proposed by them was, that all the States should be

thrown into one mass, and a new partition be made into thirteen equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices, of different States, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (the King of France,) directed by the wisdom of one of the most enlightened and patriotic ministers (Mr. Neckar) that any age has produced, to equalize, in some points only, the different usages and regulations of the different provinces. But admitting a general amalgamation and repartition of the States to be practicable, and the danger apprehended by the smaller States from a proportional representation to be real,—would not a particular and voluntary coalition of these with their neighbours, be less inconvenient to the whole community, and equally effectual for their own safety? If New Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the States, in which case they would necessarily form a junction with their neighbours, why might not this end be attained by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the States, when it was, to say the least, extremely difficult, would be obnoxious to many of the States, and when neither the inconvenience, nor the benefit of the expedient to themselves, would be lessened by confining it to themselves? The prospect of many new States to the westward was another consideration

of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they should be entitled to vote according to their proportion of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever, might give law to the whole.²⁶

On a question for postponing generally the first proposition of Mr. PATTERSON's plan, it was agreed to,—New York and New Jersey only being, no.²⁷

On the question, moved by Mr. KING, whether the Committee should rise, and Mr. RANDOLPH's proposition be reported without alteration, which was in fact a question whether Mr. RANDOLPH's should be adhered to as preferable to those of Mr. PATTERSON,—Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—7; New York, New Jersey, Delaware, no—3; Maryland, divided.

Mr. RANDOLPH's plan as reported from the Committee [q. v. June 13th] being before the House, and—

The first Resolution, "that a national Government ought to be established, consisting, &c.," being taken up,

Mr. WILSON observed that, by a national Government, he did not mean one that would swallow up the State Governments, as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of Colonel HAMILTON, that they might not only subsist, but subsist on friendly terms with the former. They were absolutely necessary for certain

purposes, which the former could not reach. All large governments must be subdivided into lesser jurisdictions. As examples he mentioned Persia, Rome, and particularly the divisions and subdivisions of England by Alfred.

Colonel HAMILTON coincided with the proposition as it stood in the Report. He had not been understood yesterday. By an abolition of the States, he meant that no boundary could be drawn between the National and State Legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalry of the States would gradually subvert it. Even as corporations, the extent of some of them, as Virginia, Massachusetts, &c., would be formidable. As *States*, he thought they ought to be abolished. But he admitted the necessity of leaving in them subordinate jurisdictions. The examples of Persia and the Roman Empire, cited by Mr. WILSON, were, he thought, in favor of his doctrine, the great powers delegated to the Satraps and Proconsuls having frequently produced revolts and schemes of independence.

Mr. KING wished, as every thing depended on this proposition, that no objection might be improperly indulged against the phraseology of it. He conceived that the import of the term "States," "sovereignty," "*national*," "federal," had been often used and applied in the discussions inaccurately and delusively. The States were not "sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings, they were

dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war. On the other side, if the union of the States comprises the idea of a confederation, it comprises that also of consolidation. A union of the States is a union of the men composing them, from whence a *national* character results to the whole. Congress can act alone without the States; they can act, and their acts will be binding, against the instructions of the States. If they declare war, war is *de jure* declared; captures made in pursuance of it are lawful; no acts of the States can vary the situation, or prevent the judicial consequences. If the States, therefore, retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects, they formed a nation in others. The Convention could clearly deliberate on and propose any alterations that Congress could have done under the Federal Articles. And could not Congress propose, by virtue of the last Article, a change in any article whatever,—and as well that relating to the equality of suffrage, as any other? He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the States; but thought that much of their power ought to be taken from them.²⁸

Mr. MARTIN said, he considered that the separation from Great Britain placed the thirteen States

in a state of nature towards each other ; that they would have remained in that state till this time, but for the Confederation ; that they entered into the Confederation on the footing of equality ; that they met now to amend it, on the same footing ; and that he could never accede to a plan that would introduce an inequality, and lay ten States at the mercy of Virginia, Massachusetts and Pennsylvania.

Mr. WILSON could not admit the doctrine that when the colonies became independent of Great Britain, they became independent also of each other. He read the Declaration of Independence, observing thereon, that the *United Colonies* were declared to be free and independent States ; and inferring, that they were independent, not *individually* but *unitedly*, and that they were confederated, as they were independent States.

Colonel HAMILTON assented to the doctrine of Mr. WILSON. He denied the doctrine that the States were thrown into a state of nature. He was not yet prepared to admit the doctrine that the Confederacy could be dissolved by partial infractions of it. He admitted that the States met now on an equal footing, but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing, for the purpose of appeasing the fear of the small States, that two circumstances would render them secure under a national Government in which they might lose the equality of rank which they now held : one was the local situation of the three largest States, Virginia, Massachusetts and Pennsylvania. They were separated from each other by distance of place, and

equally so, by all the peculiarities which distinguish the interests of one State from those of another. No combination, therefore, could be dreaded. In the second place, as there was a gradation in the States, from Virginia, the largest, down to Delaware, the smallest, it would always happen that ambitious combinations among a few States might and would be counteracted by defensive combinations of greater extent among the rest. No combination has been seen among the large counties, merely as such, against lesser counties. The more close the union of the States, and the more complete the authority of the whole, the less opportunity will be allowed to the stronger States to injure the weaker.²¹

Adjourned.

WEDNESDAY, JUNE 20TH.

In Convention,—Mr. WILLIAM BLOUNT, from North Carolina, took his seat.

The first Resolution of the Report of the Committee of the Whole being before the House—

Mr. ELLSWORTH, seconded by Mr. GORHAM, moves to alter it, so as to run "that the government of the United States ought to consist of a supreme Legislative, Executive and Judiciary." This alteration, he said, would drop the word *national*, and retain the proper title "the United States." He could not admit the doctrine that a breach of any of the Federal Articles could dissolve the whole. It would be highly dangerous not to consider the Confederation

as still subsisting. He wished, also, the plan of the Convention to go forth as an amendment of the Articles of the Confederation, since, under this idea the authority of the Legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification, several succeeding conventions within the States would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up constitutions.

Mr. RANDOLPH did not object to the change of expression, but apprised the gentleman who wished for it, that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification.

The motion of Mr. ELLSWORTH was acquiesced in, *nem. con.*

The second Resolution, "that the national legislature ought to consist of two branches," being taken up, the word "national" struck out, as of course.

Mr. LANSING observed, that the true question here was, whether the Convention would adhere to, or depart from, the foundation of the present confederacy; and moved, instead of the second Resolution, "that the powers of legislation be vested in the United States in Congress." He had already assigned two reasons against such an innovation as was proposed,—first, the want of competent powers in the Convention; secondly, the state of the public mind. It had been observed by (Mr. MADISON), in discussing the first point, that in two States the Delegates to Congress were chosen by the people. Notwithstanding the first appearance of this remark,

it had in fact no weight, as the Delegates, however chosen, did not represent the people, merely as so many individuals; but as forming a sovereign State. Mr. RANDOLPH put it, he said, on its true footing, namely that the public safety superseded the scruple arising from the review of our powers. But in order to feel the force of this consideration, the same impression must be had of the public danger. He had not himself the same impression, and could not therefore dismiss his scruple. Mr. WILSON contended, that, as the Convention were only to recommend, they might recommend what they pleased. He differed much from him. Any act whatever of so respectable a body must have a great effect; and if it does not succeed will be a source of great dissensions. He admitted that there was no certain criterion of the public mind on the subject. He therefore recurred to the evidence of it given by the opposition in the States to the scheme of an Impost. It could not be expected that those possessing sovereignty could ever voluntarily part with it. It was not to be expected from any one State, much less from thirteen. He proceeded to make some observations on the plan itself, and the arguments urged in support of it. The point of representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness; but from the actual fewness of the inhabitants, some of them not having more than one or two. A great inequality existed in the counties of England. Yet the like complaint of peculiar corruption in the small ones had not been made. It had been said that Congress repre-

sent the State prejudices,—will not any other body whether chosen by the Legislatures or people of the States, also represent their prejudices? It had been asserted by his colleague (Colonel HAMILTON), that there was no coincidence of interests among the large States that ought to excite fears of oppression in the smaller. If it were true that such a uniformity of interests existed among the States, there was equal safety for all of them whether the representation remained as heretofore, or were proportioned as now proposed. It is proposed that the General Legislature shall have a negative on the laws of the States. Is it conceivable that there will be leisure for such a task? There will, on the most moderate calculation, be as many acts sent up from the States as there are days in the year. Will the members of the General Legislature be competent judges? Will a gentleman from Georgia be a judge of the expediency of a law which is to operate in New Hampshire? Such a negative would be more injurious than that of Great Britain heretofore was. It is said that the National Government must have the influence arising from the grant of offices and honors. In order to render such a government effectual, he believed such an influence to be necessary. But if the States will not agree to it, it is in vain, worse than in vain, to make the proposition. If this influence is to be attained, the States must be entirely abolished. Will any one say, this would ever be agreed to? He doubted whether any General Government, equally beneficial to all, can be attained. That now under consideration, he is sure, must be utterly unattainable. He had another objection. The system was too novel and complex.

No man could foresee what its operation will be, either with respect to the General Government, or the State Governments. One or other, it has been surmised, must absorb the whole.²⁰

Col. MASON did not expect this point would have been reagitated. The essential differences between the two plans had been clearly stated. The principal objections against that of Mr. RANDOLPH were, the *want of power*, and the *want of practicability*. There can be no weight in the first, as the fiat is not to be *here*, but in the people. He thought with his colleague (Mr. RANDOLPH,) that there were, besides, certain crises, in which all the ordinary cautions yielded to public necessity. He gave as an example, the eventual treaty with Great Britain, in forming which the Commissioners of the United States had boldly disregarded the improvident shackles of Congress; had given to their country an honorable and happy peace, and, instead of being censured for the transgression of their powers, had raised to themselves a monument more durable than brass. The *impracticability* of gaining the public concurrence, he thought, was still more groundless. Mr. LANSING had cited the attempts of Congress to gain an enlargement of their powers, and had inferred from the miscarriage of these attempts, the hopelessness of the plan which he (Mr. LANSING) opposed. He thought a very different inference ought to have been drawn, *viz.* that the plan which Mr. LANSING espoused, and which proposed to augment the powers of Congress, never could be expected to succeed. He meant not to throw any reflections on Congress as a body, much less on any particular members of it. He meant, however, to speak his sentiments without reserve on

this subject ; it was a privilege of age, and perhaps the only compensation which nature had given for the privation of so many other enjoyments ; and he should not scruple to exercise it freely. Is it to be thought that the people of America, so watchful over their interests, so jealous of their liberties, will give up their all, will surrender both the sword and the purse, to the same body,—and that, too, not chosen immediately by themselves ? They never will. They never ought. Will they trust such a body with the regulation of their trade, with the regulation of their taxes, with all the other great powers which are in contemplation ? Will they give unbounded confidence to a secret Journal,—to the intrigues, to the factions, which in the nature of things appertain to such an assembly ? If any man doubts the existence of these characters of Congress, let him consult their Journals for the years '78, '79, and '80. It will be said, that if the people are averse to parting with power, why is it hoped that they will part with it to a national Legislature ? The proper answer is, that in this case they do not part with power : they only transfer it from one set of immediate representatives to another set. Much has been said of the unsettled state of the mind of the people. He believed the mind of the people of America, as elsewhere, was unsettled as to some points, but settled as to others. In two points he was sure it was well settled,—first, in an attachment to republican government ; secondly, in an attachment to more than one branch in the Legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to have been preconcerted.

This must either have been a miracle, or have resulted from the genius of the people. The only exceptions to the establishment of two branches in the Legislature are the State of Pennsylvania, and Congress; and the latter the only single one not chosen by the people themselves. What has been the consequence? The people have been constantly averse to giving that body further powers. It was acknowledged by Mr. PATTERSON, that his plan could not be enforced without military coercion. Does he consider the force of this concession? The most jarring elements of nature, fire and water themselves, are not more incompatible than such a mixture of civil liberty and military execution. Will the militia march from one State into another, in order to collect the arrears of taxes from the delinquent members of the Republic? Will they maintain an army for this purpose? Will not the citizens of the invaded State assist one another, till they rise as one man and shake off the Union altogether? Rebellion is the only case in which the military force of the State can be properly exerted against its citizens. In one point of view, he was struck with horror at the prospect of recurring to this expedient. To punish the non-payment of taxes with death was a severity not yet adopted by despotism itself; yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat, that, notwithstanding his solicitude to establish a national Government, he never would agree to abolish the State Governments, or render them

absolutely insignificant. They were as necessary as the General Government, and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable. The Convention, though comprising so many distinguished characters, could not be expected to make a faultless Government. And he would prefer trusting to posterity the amendment of its defects, rather than to push the experiment too far.²²

Mr. LUTHER MARTIN agreed with Colonel MASON as to the importance of the State Governments: he would support them at the expense of the General Government, which was instituted for the purpose of that support. He saw no necessity for two branches; and if it existed, Congress might be organized into two. He considered Congress as representing the people, being chosen by the Legislatures, who were chosen by the people. At any rate, Congress represented the Legislatures; and it was the Legislatures, not the people, who refused to enlarge their powers. Nor could the rule of voting have been the ground of objection, otherwise ten of the States must always have been ready to place further confidence in Congress. The causes of repugnance must therefore be looked for elsewhere. At the separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties, instead of incorporating themselves into one. To these they look up for the security of their lives, liberties, and properties; to these they must look up. The Federal Government they formed to defend the whole against foreign nations

in time of war, and to defend the lesser States against the ambition of the larger. They are afraid of granting power unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular States which the Union was meant to support; and expose the lesser to being swallowed up by the larger. He conceived also that the people of the States, having already vested their powers in their respective Legislatures, could not resume them without a dissolution of their Governments. He was against conventions in the States—was not against assisting States against rebellious subjects—thought the *federal* plan of Mr. PATTERSON did not require coercion more than the *national one*, as the latter must depend for the deficiency of its revenues on requisitions and quotas—and that a national judiciary, extended into the States, would be ineffectual, and would be viewed with a jealousy inconsistent with its usefulness.²²²

Mr. SHERMAN seconded and supported Mr. LANSING's motion. He admitted two branches to be necessary in the State Legislatures, but saw no necessity in a confederacy of States. The examples were all of a single council. Congress carried us through the war, and perhaps as well as any government could have done. The complaints at present are, not that the views of Congress are unwise or unfaithful, but that their powers are insufficient for the execution of their views. The national debt, and the want of power somewhere to draw forth the national resources, are the great matters that press. All the States were sensible of the de-

fect of power in Congress. He thought much might be said in apology for the failure of the State Legislatures, to comply with the Confederation. They were afraid of leaning too hard on the people by accumulating taxes; no *constitutional* rule had been, or could be observed in the quotas; the accounts also were unsettled, and every State supposed itself in advance, rather than in arrears. For want of a general system, taxes to a due amount had not been drawn from trade, which was the most convenient resource. As almost all the States had agreed to the recommendation of Congress on the subject of an impost, it appeared clearly that they were willing to trust Congress with power to draw a revenue from trade. There is no weight, therefore, in the argument drawn from a distrust of Congress; for money matters being the most important of all, if the people will trust them with power as to them, they will trust them with any other necessary powers. Congress, indeed, by the Confederation, have in fact the right of saying how much the people shall pay, and to what purpose it shall be applied; and this right was granted to them in the expectation that it would in all cases have its effect. If another branch were to be added to Congress, to be chosen by the people, it would serve to embarrass. The people would not much interest themselves in the elections, a few designing men in the large districts would carry their points; and the people would have no more confidence in their new representatives than in Congress. He saw no reason why the State Legislatures should be unfriendly, as had been suggested, to Congress. If they appoint Congress, and approve of their mea-

tures, they would be rather favourable and partial to them. The disparity of the States in point of size he perceived was the main difficulty. But the large States had not yet suffered from the equality of votes enjoyed by the smaller ones. In all great and general points, the interests of all the States were the same. The State of Virginia, notwithstanding the equality of votes, ratified the Confederation without even proposing any alteration. Massachusetts also ratified without any material difficulty, &c. In none of the ratifications is the want of two branches noticed or complained of. To consolidate the States, as some had proposed, would dissolve our treaties with foreign nations, which had been formed with us, as *confederated* States. He did not, however, suppose that the creation of two branches in the Legislature would have such an effect. If the difficulty on the subject of representation cannot be otherwise got over, he would agree to have two branches, and a proportional representation in one of them, provided each State had an equal voice in the other. This was necessary to secure the rights of the lesser States; otherwise three or four of the large States would rule the others as they please. Each State, like each individual, had its peculiar habits, usages, and manners, which constituted its happiness. It would not, therefore, give to others a power over this happiness, any more than an individual would do, when he could avoid it.²²

Mr. WILSON urged the necessity of two branches; observed, that if a proper model was not to be found in other confederacies, it was not to be wondered at. The number of them was small, and the duration of

some at least short. The Amphictyonic and Achæan were formed in the infancy of political science; and appear, by their history and fate, to have contained radical defects. The Swiss and Belgic confederacies were held together, not by any vital principle of energy, but by the incumbent pressure of formidable neighbouring nations. The German owed its continuance to the influence of the House of Austria. He appealed to our own experience for the defects of our confederacy. He had been six years, of the twelve since the commencement of the Revolution, a member of Congress, and had felt all its weaknesses. He appealed to the recollection of others, whether, on many important occasions, the public interest had not been obstructed by the small members of the Union. The success of the Revolution was owing to other causes, than the constitution of Congress. In many instances it went on even against the difficulties arising from Congress themselves. He admitted that the large States did accede, as had been stated to the Confederation in its present form. But it was the effect of necessity not of choice. There are other instances of their yielding, from the same motive, to the unreasonable measures of the small States. The situation of things is now a little altered. He insisted that a jealousy would exist between the State Legislatures and the General Legislature; observing, that the members of the former would have views and feelings very distinct in this respect from their constituents. A private citizen of a State is indifferent whether power be exercised by the General or State Legislatures, provided it be exercised most for his

happiness. His representative has an interest in its being exercised by the body to which he belongs. He will therefore view the National Legislature with the eye of a jealous rival. He observed that the addresses of Congress to the people at large had always been better received, and produced greater effect, than those made to the Legislatures.²²⁴

On the question for postponing, in order to take up Mr. LANSING's proposition, "to vest the powers of legislation in Congress,"—Connecticut, New York, New Jersey, Delaware, aye—4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—6; Maryland, divided.

On motion of the Deputies from Delaware, the question on the second Resolution in the Report from the Committee of the Whole, was postponed till to-morrow.

Adjourned.

THURSDAY, JUNE 21ST.

In Convention,—Mr. JONATHAN DAYTON, from New Jersey, took his seat.

The second Resolution in the Report from the Committee of the Whole, being under consideration,—

Doctor JOHNSON. On a comparison of the two plans which had been proposed from Virginia and New Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the States. The plan from Virginia did not profess to destroy this individuality altogether; but was charged with such a ten-

dency. One gentleman alone (Col. HAMILTON), in his animadversions on the plan of New Jersey, boldly and decisively contended for an abolition of the State Governments. Mr. WILSON and the gentleman from Virginia, who also were adversaries of the plan of New Jersey, held a different language. They wished to leave the States in possession of a considerable, though a subordinate, jurisdiction. They had not yet, however, shewn how this could consist with, or be secured against, the general sovereignty and jurisdiction which they proposed to give to the National Government. If this could be shewn, in such a manner as to satisfy the patrons of the New Jersey propositions, that the individuality of the States would not be endangered, many of their objections would no doubt be removed. If this could not be shewn, their objections would have their full force. He wished it, therefore, to be well considered, whether, in case the States, as was proposed, should retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the General Government, without giving them each a distinct and equal vote for the purpose of defending themselves in the general councils.

Mr WILSON's respect for Doctor JOHNSON, added to the importance of the subject, led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was asked, how the General Government and individuality of the particular States could be reconciled to each other,—and how the latter could be secured against the former? Might it not, on the other side, be asked, how the

former was to be secured against the latter? It was generally admitted, that a jealousy and rivalry would be felt, between the general and particular Governments. As the plan now stood, though indeed contrary to his opinion, one branch of the General Government (the Senate, or second branch) was to be appointed by the State Legislatures. The State Legislatures, therefore, by this participation in the General Government, would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the General Government of defending itself, by having an appointment of some one constituent branch of the State Governments. If a security be necessary on one side, it would seem reasonable to demand it on the other. But taking the matter in a more general view, he saw no danger to the States, from the General Government. In case a combination should be made by the large ones, it would produce a general alarm among the rest, and the project would be frustrated. But there was no temptation to such a project. The States having in general a similar interest, in case of any propositions in the National Legislature to encroach on the State Legislatures, he conceived a general alarm would take place in the National Legislature itself; that it would communicate itself to the State Legislatures; and would finally spread among the people at large. The General Government will be as ready to preserve the rights of the States, as the latter are to preserve the rights of individuals,—all the members of the former having a common interest, as representatives of all the people of the latter, to leave the State

Governments in possession of what the people wish them to retain. He could not discover, therefore, any danger whatever on the side from which it was apprehended. On the contrary, he conceived, that, in spite of every precaution, the General Government would be in perpetual danger of encroachments from the State Governments.^m

Mr. MADISON was of opinion,—in the first place, that there was less danger of encroachment from the General Government than from the State Governments; and in the second place, that the mischiefs from encroachments would be less fatal if made by the former, than if made by the latter.

1. All the examples of other confederacies prove the greater tendency, in such systems, to anarchy than to tyranny; to a disobedience of the members, than usurpations of the Federal head. Our own experience had fully illustrated this tendency. But it will be said, that the proposed change in the principles and form of the Union will vary the tendency; that the General Government will have real and greater powers, and will be derived, in one branch at least, from the people, not from the Governments of the States. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the General Legislature, and the States reduced to corporations dependent on the General Legislature,—why should it follow that the General Government would take from the States any branch of their power, as far as its operation was beneficial, and its continuance desirable to the people? In some of the States, particularly in Connecticut, all the townships are incorporated, and have a certain

limited jurisdiction,—have the representatives of the people of the townships in the Legislature of the State ever endeavoured to despoil the townships of any part of their local authority? As far as this local authority is convenient to the people, they are attached to it; and their representatives, chosen by and amenable to them, naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a General Government to State Governments is parallel.

2. Guards were more necessary against encroachments of the State Governments on the General Government, than of the latter on the former. The great objection made against an abolition of the State Governments was, that the General Government could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not against the probable abuse of the general power, but against the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable, it could not in this view be improper; as far as it would be impracticable, the convenience of the General Government itself would concur with that of the people in the maintenance of subordinate governments. Were it practicable for the General Government to extend its care to every requisite object without the co-operation of the State Governments, the people would not be less free as members of one great Republic, than as members of thirteen small ones. A citizen of Delaware was not more free than a citizen of Virginia; nor

would either be more free than a citizen of America. Supposing, therefore, a tendency in the General Government to absorb the State Governments, no *fatal* consequence could result. Taking the reverse as the supposition, that a tendency should be left in the State Governments towards an independence on the General Government, and the gloomy consequences need not be pointed out. The imagination of them must have suggested to the States the experiment we are now making, to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task.

On the question for resolving, "that the Legislature ought to consist of two branches,"—Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—7; New York, New Jersey, Delaware, no—3; Maryland, divided.²⁸

The *third* Resolution of the Report being taken into consideration—

General PINCKNEY moved, "that the first branch, instead of being elected by the people, should be elected in such manner as the Legislature of each State should direct." He urged,—first, that this liberty would give more satisfaction, as the Legislatures could then accommodate the mode to the convenience and opinions of the people; secondly, that it would avoid the undue influence of large counties, which would prevail if the elections were to be made in districts, as must be the mode intended by the report of the Committee; thirdly, that otherwise disputed elections must be referred to the General Legislature, which would be attended with intolera-

ble expense and trouble to the distant parts of the Republic.

Mr. L. MARTIN seconded the motion.

Col. HAMILTON considered the motion as intended manifestly to transfer the election from the people to the State Legislatures, which would essentially vitiate the plan. It would increase that State influence which could not be too watchfully guarded against. All, too, must admit the possibility, in case the General Government should maintain itself, that the State Governments might gradually dwindle into nothing. The system, therefore, should not be engrafted on what might possibly fail.

Mr. MASON urged the necessity of retaining the election by the people. Whatever inconvenience may attend the democratic principle, it must actuate one part of the Government. It is the only security for the rights of the people.

Mr. SHERMAN would like an election by the Legislatures best, but is content with the plan as it stands.

Mr. RUTLEDGE could not admit the solidity of the distinction between a mediate and immediate election by the people. It was the same thing to act by one's self, and to act by another. An election by the Legislature would be more refined, than an election immediately by the people; and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts, it is not to be supposed that such proper characters would have been preferred. The Delegates to Congress, he thought, had also

been fitter men than would have been appointed by the people at large.

Mr. WILSON considered the election of the first branch by the people not only as the corner-stone, but as the foundation of the fabric; and that the difference between a mediate and immediate election was immense. The difference was particularly worthy of notice in this respect, that the Legislatures are actuated not merely by the sentiment of the people; but have an official sentiment opposed to that of the General Government, and perhaps to that of the people themselves.

Mr. KING enlarged on the same distinction. He supposed the Legislatures would constantly choose men subservient to their own views, as contrasted to the general interest; and that they might even devise modes of election that would be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the General Government; and mentioned particularly a competition between the National and State debts, for the most certain and productive funds.

General PINCKNEY was for making the State Governments a part of the general system. If they were to be abolished, or lose their agency, South Carolina and the other States would have but a small share of the benefits of government.

On the question for General PINCKNEY's motion, to substitute "election of the first branch in such mode as the Legislatures should appoint," instead of its being "elected by the people,"—Connecticut, New Jersey, Delaware, South Carolina, aye—4;

Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, no—6; Maryland divided.

General PINCKNEY then moved, "that the first branch be elected *by the people* in such mode as the Legislatures should direct;" but waived it on its being hinted that such a provision might be more properly tried in the detail of the plan.

On the question for the election of the first branch "by the *people*,"—Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—9; New Jersey, no—1; Maryland divided.

The election of the first branch "for the term of three years," being considered,—

Mr. RANDOLPH moved to strike out "three years," and insert "two years." He was sensible that annual elections were a source of great mischiefs in the States, yet it was the want of such checks against the popular intemperance as were now proposed, that rendered them so mischievous. He would have preferred annual to biennial, but for the extent of the United States, and the inconvenience which would result from them to the representatives of the extreme parts of the Empire. The people were attached to frequency of elections. All the Constitutions of the States, except that of South Carolina, had established annual elections.

Mr. DICKINSON. The idea of annual elections was borrowed from the ancient usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial; and in order to prevent the inconveni-

ence of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one-third.

Mr. ELLSWORTH was opposed to three years, supposing that even one year was preferable to two years. The people were fond of frequent elections, and might be safely indulged in one branch of the Legislature. He moved for "one year."

Mr. STRONG seconded and supported the motion.

Mr. WILSON, being for making the first branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar and pleasing to the people. It would not be more inconvenient to them than triennial elections, as the people in all the States have annual meetings with which the election of the national Representatives might be made to coincide. He did not conceive that it would be necessary for the National Legislature to sit constantly, perhaps not half, perhaps not one-fourth of the year.

Mr. MADISON was persuaded that annual elections would be extremely inconvenient, and apprehensive that biennial would be too much so; he did not mean inconvenient to the electors, but to the Representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expenses. Besides, none of those who wished to be re-elected would remain at the seat of government, confiding that their absence would not affect them. The members of Congress had done this with few instances of disappointment. But as the choice was here to be made by the

people themselves, who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a rival candidate, it must be supposed that the members from the most distant States would travel backwards and forwards at least as often as the elections should be repeated. Much was to be said, also, on the time requisite for new members, who would always form a large proportion, to acquire that knowledge of the affairs of the States in general, without which their trust could not be usefully discharged.

Mr. SHERMAN preferred annual elections, but would be content with biennial. He thought the Representatives ought to return home and mix with the people. By remaining at the seat of government, they would acquire the habits of the place, which might differ from those of their constituents.

Colonel MASON observed, that, the States being differently situated, such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual, the middle States would have a great advantage over the extreme ones. He wished them to be biennial, and the rather as in that case they would coincide with the periodical elections of South Carolina, as well of the other States.

Colonel HAMILTON urged the necessity of three years. There ought to be neither too much nor too little dependence on the popular sentiments. The checks in the other branches of the Government would be but feeble, and would need every auxiliary principle that could be interwoven. The British

House of Commons were elected septennially, yet the democratic spirit of the Constitution had not ceased. Frequency of elections tended to make the people listless to them; and to facilitate the success of little cabals. This evil was complained of in all the States. In Virginia it had been lately found necessary to force the attendance and voting of the people by severe regulations.

On the question for striking out "three years,"—Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—7; New York, Delaware, Maryland, no—3; New Jersey divided.

The motion for "two years" was then inserted,
*nem. con.*²²⁶

Adjourned.

FRIDAY, JUNE 22D.

In Convention,—The clause in the third Resolution, "to receive fixed stipends, to be paid out of the National Treasury," being considered,—

Mr. ELLSWORTH moved to substitute payment by the States, out of their own treasuries: observing, that the manners of different States were very different in the style of living, and in the profits accruing from the exercise of like talents. What would be deemed, therefore, a reasonable compensation in some States, in others would be very unpopular, and might impede the system of which it made a part.

Mr. WILLIAMSON favored the idea. He reminded the House of the prospect of new States to the westward. They would be too poor—would pay little into the common treasury—and would have a different interest from the old States. He did not think, therefore, that the latter ought to pay the expense of men who would be employed in thwarting their measures and interests.

Mr. GORHAM wished not to refer the matter to the State Legislatures, who were always paring down salaries in such a manner as to keep out of office men most capable of executing the functions of them. He thought, also, it would be wrong to fix the compensation by the Constitution, because we could not venture to make it as liberal as it ought to be, without exciting an enmity against the whole plan. Let the National Legislature provide for their own wages from time to time, as the State Legislatures do. He had not seen this part of their power abused, nor did he apprehend an abuse of it.

Mr. RANDOLPH said he feared we were going too far in consulting popular prejudices. Whatever respect might be due to them in lesser matters, or in cases where they formed the permanent character of the people, he thought it neither incumbent on, nor honorable for, the Convention, to sacrifice right and justice to that consideration. If the States were to pay the members of the National Legislature, a dependence would be created that would vitiate the whole system. The whole nation has an interest in the attendance and services of the members. The National Treasury therefore is the proper fund for supporting them.

Mr. KING urged the danger of creating a dependence on the States by leaving to them the payment of the members of the National Legislature. He supposed it would be best to be explicit as to the compensation to be allowed. A reserve on that point, or a reference to the National Legislature of the quantum, would excite greater opposition than any sum that would be actually necessary or proper.

Mr. SHERMAN contended for referring both the quantum and the payment of it to the State Legislatures.

Mr. WILSON was against *fixing* the compensation, as circumstances would change and call for a change of the amount. He thought it of great moment that the members of the National Government should be left as independent as possible of the State Governments in all respects.

Mr. MADISON concurred in the necessity of preserving the compensations for the National Government independent on the State Governments; but at the same time approved of *fixing* them by the Constitution, which might be done by taking a standard which would not vary with circumstances. He disliked particularly the policy, suggested by Mr. WILLIAMSON, of leaving the members from the poor States beyond the mountains to the precarious and parsimonious support of their constituents. If the Western States hereafter arising should be admitted into the Union, they ought to be considered as equals and as brethren. If their representatives were to be associated in the common councils, it was of common concern that such provisions should

be made as would invite the most capable and respectable characters into the service.

Mr. HAMILTON apprehended inconvenience from *fixing* the wages. He was strenuous against making the national council dependent on the legislative rewards of the States. Those who pay are the masters of those who are paid. Payment by the States would be unequal, as the distant States would have to pay for the same term of attendance and more days in travelling to and from the seat of government. He expatiated emphatically on the difference between the feelings and views of the *people* and the *governments* of the States, arising from the personal interest and official inducements which must render the latter unfriendly to the General Government.

Mr. WILSON moved that the salaries of the first branch "be ascertained by the National Legislature and be paid out of the National Treasury."

Mr. MADISON thought the members of the Legislature too much interested, to ascertain their own compensation. It would be indecent to put their hands into the public purse for the sake of their own pockets.

On this question, "shall the salaries of the first branch be ascertained by the national Legislature?"—New Jersey, Pennsylvania, aye—2; Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, no—7; New York, Georgia, divided.

On the question for striking out "National Treasury," as moved by Mr. ELLSWORTH,—

Mr. HAMILTON renewed his opposition to it. He

pressed the distinction between the State Governments and the people. The former would be the rivals of the General Government. The State Legislatures ought not, therefore, to be the paymasters of the latter.

Mr. ELLSWORTH. If we are jealous of the State Governments, they will be so of us. If on going home I tell them, we gave the General Government such powers because we could not trust you, will they adopt it? And without their approbation it is a nullity.²²⁹

On the question,—Massachusetts,* Connecticut, North Carolina, South Carolina, aye—4; New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no—5; New York, Georgia, divided; so it passed in the negative.

On a question for substituting “adequate compensation” in place of “fixed stipends,” it was agreed to, *nem. con.*, the friends of the latter being willing that the practicability of *fixing* the compensation should be considered hereafter in forming the details.²³⁰

It was then moved by Mr. BUTLER, that a question be taken on both points jointly, to wit, “adequate compensation to be paid out of the National Treasury.” It was objected to as out of order, the parts having been separately decided on. The President referred the question of order to the House, and it was determined to be in order,—Connecticut,

* It appeared that Massachusetts concurred, not because they thought the State Treasury ought to be substituted; but because they thought nothing should be said on the subject, in which case it would silently devolve on the National Treasury to support the National Legislature

New Jersey, Delaware, Maryland, North Carolina, South Carolina, aye—6; New York, Pennsylvania, Virginia, Georgia, no—4; Massachusetts, divided. The question on the sentence was then postponed by South Carolina, in right of the State.²³¹

Col. MASON moved to insert "twenty-five years of age as a qualification for the members of the first branch." He thought it absurd that a man to-day should not be permitted by the law to make a bargain for himself, and to-morrow should be authorized to manage the affairs of a great nation. It was the more extraordinary, as every man carried with him, in his own experience, a scale for measuring the deficiency of young politicians; since he would, if interrogated, be obliged to declare that his political opinions at the age of twenty-one were too crude and erroneous to merit an influence on public measures. It had been said, that Congress had proved a good school for our young men. It might be so, for any thing he knew; but if it were, he chose that they should bear the expense of their own education.

Mr. WILSON was against abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons choosing. The motion tended to damp the efforts of genius and of laudable ambition. There was no more reason for incapacitating *youth* than *age*, where the requisite qualifications were found. Many instances might be mentioned of signal services, rendered in high stations, to the public, before the age of twenty-five. The

present Mr. Pitt and Lord Bolingbroke were striking instances.

On the question for inserting "twenty-five years of age,"—Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye,—7; Massachusetts, Pennsylvania, Georgia, no—3; New York, divided.²³⁹

Mr. GORHAM moved to strike out the last member of the third Resolution, concerning ineligibility of members of the first branch to office during the term of their membership, and for one year after. He considered it unnecessary and injurious. It was true, abuses had been displayed in Great Britain; but no one could say how far they might have contributed to preserve the due influence of the Government, nor what might have ensued in case the contrary theory had been tried.

Mr. BUTLER opposed it. This precaution against intrigue was necessary. He appealed to the example of Great Britain; where men get into Parliament that they might get offices for themselves or their friends. This was the source of the corruption that ruined their government.

Mr. KING thought we were refining too much. Such a restriction on the members would discourage merit. It would also give a pretext to the Executive for bad appointments, as he might always plead this as a bar to the choice he wished to have made.

Mr. WILSON was against fettering elections, and discouraging merit. He suggested, also, the fatal consequence in time of war, of rendering, perhaps, the best commanders ineligible; appealed to our situation during the late war, and indirectly leading

to a recollection of the appointment of the Commander-in-Chief out of Congress.

Colonel MASON was for shutting the door at all events against corruption. He enlarged on the venality and abuses, in this particular, in Great Britain; and alluded to the multiplicity of foreign embassies by Congress. The disqualification he regarded as a corner-stone in the fabric.

Colonel HAMILTON. There are inconveniences on both sides. We must take man as we find him; and if we expect him to serve the public, must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our errors. He thought the remark of Mr. Gorham a just one. It was impossible to say what would be the effect in Great Britain of such a reform as had been urged. It was known that one of the ablest politicians (Mr. Hume) had pronounced all that influence on the side of the Crown which went under the name of *corruption*, an essential part of the weight which maintained the equilibrium of the Constitution.

On Mr. GORHAM's motion for striking out "ineligibility," it was lost by an equal division of the votes,—Massachusetts, New Jersey, North Carolina, Georgia, aye—4; Connecticut, Maryland, Virginia, South Carolina, no—4; New York, Pennsylvania, Delaware, divided.

Adjourned.²³³

SATURDAY, JUNE 23D.

In Convention,—the third Resolution being resumed,—

On the question, yesterday postponed by South Carolina, for agreeing to the whole sentence, "for allowing an adequate compensation, to be paid out of the *Treasury of the United States*,"—Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, aye—5; Connecticut, New York, Delaware, North Carolina, South Carolina, no—5; Georgia, divided. So the question was lost, and the sentence not inserted.²³⁴

General PINCKNEY moves to strike out the ineligibility of members of the first branch to offices established "by a particular State." He argued from the inconvenience to which such a restriction would expose both the members of the first branch, and the States wishing for their services; and from the smallness of the object to be attained by the restriction. It would seem from the ideas of some, that we are erecting a kingdom to be divided against itself: he disapproved such a fetter on the Legislature.

Mr. SHERMAN seconds the motion. It would seem that we are erecting a kingdom at war with itself. The Legislature ought not to be fettered in such a case.²³⁵

On the question,—Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—8; Massachusetts, Pennsylvania, Delaware, no—3.

Mr. MADISON renewed his motion, yesterday made and waived, to render the members of the first branch "ineligible during their term of service, and for one year after, to such offices only, as should be established, or the emolument augmented, by the

Legislature of the United States during the time of their being members." He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, and that if the door was shut against them, it might properly be left open for the appointment of members to other offices as an encouragement to the legislative service.

Mr. ALEXANDER MARTIN seconded the motion.

Mr. BUTLER. The amendment does not go far enough, and would be easily evaded.²²⁶

Mr. RUTLEDGE was for preserving the Legislature as pure as possible, by shutting the door against appointments of its own members to office, which was one source of its corruption.

Mr. MASON. The motion of my colleague is but a partial remedy for the evil. He appealed to him as a witness of the shameful partiality of the Legislature of Virginia to its own members. He enlarged on the abuses and corruption in the British Parliament connected with the appointment of its members. He could not suppose that a sufficient number of citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the Legislative service. Genius and virtue, it may be said, ought to be encouraged. Genius, for aught he knew, might; but that virtue should be encouraged by such a species of venality, was an idea that at least had the merit of being new.

Mr. KING remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say, that no member shall himself be eli-

gible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality? We were losing, therefore, the advantages on one side, without avoiding the evils on the other.

Mr. WILSON supported the motion. The proper cure, he said, for corruption in the Legislature was to take from it the power of appointing to offices. One branch of corruption would, indeed, remain, that of creating unnecessary offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honourable offices of the Government,—an ambition most likely to be felt in the early and most incorrupt period of life, and which all wise and free governments had deemed it sound policy to cherish, not to check. The members of the Legislature have, perhaps, the hardest and least profitable task of any who engage in the service of the State. Ought this merit to be made a disqualification?

Mr. SHERMAN observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the Legislature to the latter. A new embassy might be established to a new Court, and an ambassador taken from another, in order to *create* a vacancy for a favorite member. He admitted that inconveniences lay on both sides. He hoped there would be sufficient inducements to the public service with-

out resorting to the prospect of desirable offices; and on the whole was rather against the motion of Mr. MADISON.

Mr. GERRY thought, there was great weight in the objection of Mr. SHERMAN. He added, as another objection against admitting the eligibility of members in any case, that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves. In answer to Mr. KING, he observed, that, although members, if disqualified themselves, might still intrigue and cabal for their sons, brothers, &c., yet as their own interests would be dearer to them than those of their nearest connexions, it might be expected they would go greater lengths to promote them.

Mr. MADISON had been led to this motion, as a middle ground between an eligibility in all cases and an absolute disqualification. He admitted the probable abuses of an eligibility of the members to offices particularly within the gift of the Legislature. He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia Assembly by his colleague (Colonel MASON). He appealed, however, to him in turn to vouch another fact not less notorious in Virginia, that the backwardness of the best citizens to engage in the Legislative service gave but too great success to unfit characters. The question was not to be viewed on one side only. The advantages and disadvantages on both ought to be fairly compared. The objects to be aimed at were to fill all offices with the fittest characters, and to draw the wisest and most worthy citizens into the legislative service. If, on one hand,

public bodies were partial to their own members, on the other, they were as apt to be misled by taking characters on report, or the authority of patrons and dependents. All who had been concerned in the appointment of strangers, on those recommendations must be sensible of this truth. Nor would the partialities of such bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of government, or be found among the residents there, and practise all the means of courting the favor of the members. A great proportion of the appointments made by the States were evidently brought about in this way. In the General Government, the evil must be still greater, the characters of distant States being much less known throughout the United States, than those of the distant parts of the same State. The elections by Congress had generally turned on men living at the Seat of the Federal Government, or in its neighbourhood. As to the next object, the impulse to the legislative service was evinced by experience to be in general too feeble with those best qualified for it. This inconvenience would also be more felt in the National Government than in the State Governments, as the sacrifices required from the distant members would be much greater, and the pecuniary provisions, probably, more disproportionate. It would therefore be impolitic to add fresh objections to the legislative service by an absolute disqualification of its members. The point in question was, whether this would be an objection with the most capable citizens. Arguing from experience, he concluded that it would. The legislature of Virginia would

probably have been without many of its best members, if in that situation they had been ineligible to Congress, to the Government, and other honourable offices of the State.

Mr. BUTLER thought characters fit for office would never be unknown.

Colonel MASON. If the members of the Legislature are disqualified, still the honours of the State will induce those who aspire to them to enter that service, as the field in which they can best display and improve their talents, and lay the train for their subsequent advancement.

Mr. JENIFER remarked, that in Maryland the Senators, chosen for five years, could hold no other office; and that this circumstance gained them the greatest confidence of the people.

On the question for agreeing to the motion of Mr. MADISON,—Connecticut, New Jersey, aye—2; New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—8; Massachusetts, divided.

Mr. SHERMAN moved to insert the words, “and incapable of holding” after the words “ineligible to,” which was agreed to without opposition.

The word “established,” and the words “under the national government,” were struck out of the third Resolution.

Mr. SPAIGHT called for a division of the question, in consequence of which it was so put as that it turned on the first member of it, on the ineligibility of members *during the term for which they were elected*—whereon the States were, Connecticut, New York, New Jersey, Delaware, Maryland, Vir-

ginia, North Carolina, South Carolina, aye—8, Pennsylvania, Georgia, no—2; Massachusetts, divided.

On the second member of the sentence, extending ineligibility of members to one year after the term for which they were elected,—

Colonel MASON thought this essential to guard against evasions by resignations, and stipulations for office to be fulfilled at the expiration of the legislative term.

Mr. GERRY had known such a case.

Mr. HAMILTON. Evasions could not be prevented,—as by proxies—by friends holding for a year, and then opening the way, &c.

Mr. RUTLEDGE admitted the possibility of evasions, but was for contracting them as far as possible. On the question,—New York, Delaware, Maryland, South Carolina, aye—4; Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, no—6; Pennsylvania, divided.²⁰⁷

Adjourned.

MONDAY, JUNE 25TH.

In Convention,—The fourth Resolution being taken up,—

Mr. PINCKNEY spoke as follows :

The efficacy of the system will depend on this article. In order to form a right judgment in the case, it will be proper to examine the situation of this country more accurately than it has yet been done.

The people of the United States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune, and less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection and security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow. Hence, arises a greater equality than is to be found among the people of any other country; and an equality which is more likely to continue. I say, this equality is likely to continue; because in a new country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration, and where industry must be rewarded with competency, there will be few poor, and few dependent. Every member of the society almost will enjoy an equal power of arriving at the supreme offices, and consequently of directing the strength and sentiments of the whole community. None will be excluded by birth, and few by fortune, from voting for proper persons to fill the offices of government. The whole community will enjoy, in the fullest sense, that kind of political liberty which consists in the power, the members of the State reserve to themselves, of arriving at the public offices, or at least, of having votes in the nomination of those who fill them.

If this state of things is true, and the prospect of its continuance probable, it is perhaps not politic to endeavour too close an imitation of a government calculated for a people whose situation is, and whose views ought to be, extremely different.

Much has been said of the Constitution of Great Britain. I will confess that I believe it to be the best constitution in existence; but, at the same time, I am confident it is one that will not or cannot be introduced into this country, for many centuries. If it were proper to go here into a historical dissertation on the British Constitution, it might easily be shown that the peculiar excellence, the distinguishing feature, of that government cannot possibly be introduced into our system—that its balance between the Crown and the people cannot be made a part of our Constitution,—that we neither have nor can have the members to compose it, nor the rights, privileges and properties of so distinct a class of citizens to guard,—that the materials for forming this balance or check do not exist, nor is there a necessity for having so permanent a part of our Legislative, until the Executive power is so constituted as to have something fixed and dangerous in its principle. By this I mean a sole, hereditary, though limited Executive.

That we cannot have a proper body for forming a Legislative balance between the inordinate power of the Executive and the people, is evident from a review of the accidents and circumstances which gave rise to the peerage of Great Britain. I believe it is well ascertained, that the parts which compose the British Constitution arose immediately from the forests of Germany; but the antiquity of the establishment of nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the titles of *dux* and *comes*, was derived from the old Roman, to the German, Empire; while others

are of opinion that they existed among the Germans long before the Romans were acquainted with them. The institution, however, of nobility is immemorial among the nations who may properly be termed the ancestors of Great Britain. At the time they were summoned in England to become a part of the national council, the circumstances which contributed to make them a constituent part of that Constitution, must be well known to all gentlemen who have had industry and curiosity enough to investigate the subject. The nobles, with their possessions and dependents, composed a body permanent in their nature, and formidable in point of power. They had a distinct interest both from the King and the people,—an interest which could only be represented by themselves, and the guardianship of which could not be safely intrusted to others. At the time they were originally called to form a part of the national council, necessity perhaps, as much as other causes induced the monarch to look up to them. It was necessary to demand the aid of his subjects in personal and pecuniary services. The power and possessions of the nobility would not permit taxation from any assembly of which they were not a part: and the blending of the deputies of the commons with them, and thus forming what they called their *parler-ment*, was perhaps as much the effect of chance as of any thing else. The commons were at that time completely subordinate to the nobles, whose consequence and influence seem to have been the only reasons for their superiority; a superiority so degrading to the commons, that in the first summons, we find the peers are called upon to

consult, the commons to *consent*. From this time the peers have composed a part of the British Legislature; and notwithstanding their power and influence have diminished, and those of the commons have increased, yet still they have always formed an excellent balance against either the encroachments of the Crown or the people.

I have said that such a body cannot exist in this country for ages; and that until the situation of our people is exceedingly changed, no necessity will exist for so permanent a part of the Legislature. To illustrate this, I have remarked that the people of the United States are more equal in their circumstances than the people of any other country; that they have very few rich men among them—by rich men I mean those whose riches may have a dangerous influence, or such as are esteemed rich in Europe—perhaps there are not one hundred such on the continent; that it is not probable this number will be greatly increased; that the genius of the people, their mediocrity of situation, and the prospects which are afforded their industry, in a country which must be a new one for centuries, are unfavorable to the rapid distinction of ranks. The destruction of the right of primogeniture, and the equal division of the property of intestates, will also have an effect to preserve this mediocrity; for laws invariably affect the manners of a people. On the other hand, that vast extent of unpeopled territory, which opens to the frugal and industrious a sure road to competency and independence, will effectually prevent, for a considerable time, the increase of the poor or discontented, and be the means of pre-

serving that equality of condition which so eminently distinguishes us.

If equality is, as I contend, the leading feature of the United States, where, then, are the riches and wealth whose representation and protection is the peculiar province of this permanent body? Are they in the hands of the few who may be called rich,—in the possession of less than a hundred citizens? Certainly not. They are in the great body of the people, among whom there are no men of wealth, and very few of real poverty. Is it probable that a change will be created, and that a new order of men will arise? If under the British government for a century no such change was produced, I think it may be fairly concluded it will not take place while even the semblance of republicanism remains. How is this change to be effected? Where are the sources from whence it is to flow? From the landed interest? No. That is too unproductive, and too much divided in most of the States. From the monied interest? If such exists at present, little is to be apprehended from that source. Is it to spring from commerce? I believe it would be the first instance in which a nobility sprang from merchants. Besides, sir, I apprehend that on this point the policy of the United States has been much mistaken. We have unwisely considered ourselves as the inhabitants of an old, instead of a new, country. We have adopted the maxims of a state full of people, and manufactures, and established in credit. We have deserted our true interest, and instead of applying closely to those improvements in domestic policy which would have ensured the future impor-

tance of our commerce, we have rashly and prematurely engaged in schemes as extensive as they are imprudent. This, however, is an error which daily corrects itself; and I have no doubt that a few more severe trials will convince us, that very different commercial principles ought to govern the conduct of these States.

The people of this country are not only very different from the inhabitants of any state we are acquainted with in the modern world, but I assert that their situation is distinct from either the people of Greece or Rome, or of any states we are acquainted with among the ancients. Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits and manners of Sparta be resembled to our habits and manners? Are the distinction of patrician and plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldy, unmeaning body called the Germanic Empire, can they be said to possess either the same, or a situation like ours? I apprehend, not. They are perfectly different, in their distinctions of rank, their constitutions, their manners, and their policy.

Our true situation appears to me to be this,—a new extensive country, containing within itself the materials for forming a government capable of extending to its citizens all the blessings of civil and religious liberty—capable of making them happy at home. This is the great end of republican establishments. We mistake the object of our Government, if we hope or wish that it is to make us respectable abroad. Conquest or superiority among

other powers is not, or ought not ever to be, the object of republican systems. If they are sufficiently active and energetic to rescue us from contempt, and preserve our domestic happiness and security, it is all we can expect from them,—it is more than almost any other government ensures to its citizens.

I believe this observation will be found generally true,—that no two people are so exactly alike in their situation or circumstances, as to admit the exercise of the same government with equal benefit; that a system must be suited to the habits and genius of the people it is to govern, and must grow out of them.

The people of the United States may be divided into three classes,—*professional men*, who must, from their particular pursuits, always have a considerable weight in the government, while it remains popular, —*commercial men*, who may or may not have weight, as a wise or injudicious commercial policy is pursued. If that commercial policy is pursued which I conceive to be the true one, the merchants of this country will not, or ought not, for a considerable time, to have much weight in the political scale. The third is the *landed interest*, the owners and cultivators of the soil, who are, and ought ever to be, the governing spring in the system. These three classes, however distinct in their pursuits, are individually equal in the political scale, and may be easily proved to have but one interest. The dependence of each on the other is mutual. The merchant depends on the planter. Both must, in private as well as public affairs, be connected with the professional men; who in their turn must in some

measure depend on them. Hence it is clear, from this manifest connexion, and the equality which I before stated exists, and must, for the reasons then assigned, continue, that after all there is one, but one great and equal body of citizens composing the inhabitants of this country, among whom there are no distinctions of rank, and very few or none of fortune.

For a people thus circumstanced are we, then, to form a Government; and the question is, what sort of government is best suited to them?

Will it be the British Government? No. Why? Because Great Britain contains three orders of people distinct in their situation, their possessions, and their principles. These orders, combined, form the great body of the nation; and as in national expenses the wealth of the whole community must contribute, so ought each component part to be duly and properly represented. No other combination of power could form this due representation, but the one that exists. Neither the peers or the people could represent the royalty; nor could the royalty and the people form a proper representation for the peers. Each, therefore, must of necessity be represented by itself, or the sign of itself; and this accidental mixture has certainly formed a Government admirably well balanced.

But the United States contain but one order that can be assimilated to the British nation—this is the order of Commons. They will not, surely, then, attempt to form a Government consisting of three branches two of which shall have nothing to represent. They will not have an Executive and Senate

[hereditary], because the King and Lords of England are so. The same reasons do not exist, and therefore the same provisions are not necessary.

We must, as has been observed, suit our Government to the people it is to direct. These are, I believe, as active, intelligent and susceptible of good government as any people in the world. The confusion which has produced the present relaxed state is not owing to them. It is owing to the weakness and [defects] of a government incapable of combining the various interests it is intended to unite, and destitute of energy. All that we have to do, then, is to distribute the powers of government in such a manner, and for such limited periods, as, while it gives a proper degree of permanency to the magistrate, will reserve to the people the right of election they will not or ought not frequently to part with. I am of opinion that this may easily be done; and that, with some amendments, the propositions before the Committee will fully answer this end.

No position appears to me more true than this; that the General Government cannot effectually exist without reserving to the States the possession of their local rights. They are the instruments upon which the Union must frequently depend for the support and execution of their powers, however immediately operating upon the people, and not upon the States.

Much has been said about the propriety of abolishing the distinction of State Governments, and having but one general system. Suffer me for a moment to examine this question.*²³⁶

* The residue of this speech was not furnished, like the above, by Mr. Pinckney.

The mode of constituting the second branch being under consideration, the word "national" was struck out, and "United States" inserted.

Mr. GORHAM inclined to a compromise as to the rule of proportion. He thought there was some weight in the objections of the small States. If Virginia should have sixteen votes, and Delaware with several other States together sixteen, those from Virginia would be more likely to unite than the others, and would therefore have an undue influence. This remark was applicable not only to States, but to counties or other districts of the same State. Accordingly the Constitution of Massachusetts, had provided that the representatives of the larger districts should not be in an exact ratio to their numbers; and experience, he thought, had shown the provision to be expedient.

Mr. READ. The States have heretofore been in a sort of partnership. They ought to adjust their old affairs before they opened a new account. He brought into view the appropriation of the common interest in the western lands to the use of particular States. Let justice be done on this head; let the fund be applied fairly and equally to the discharge of the general debt; and the smaller States, who had been injured, would listen then, perhaps, to those ideas of just representation which had been held out.

Mr. GORHAM could not see how the Convention could interpose in the case. Errors he allowed had been committed on the subject. But Congress were now using their endeavours to rectify them. The best remedy would be such a government as would

have vigor enough to do justice throughout. This was certainly the best chance that could be afforded to the smaller States.

Mr. WILSON. The question is, shall the members of the second branch be chosen by the Legislatures of the States? When he considered the amazing extent of country—the immense population which is to fill it—the influence of the Government we are to form will have, not only on the present generation of our people and their multiplied posterity, but on the whole globe,—he was lost in the magnitude of the object. The project of Henry IV. and his statesmen, was but the picture in miniature of the great portrait to be exhibited. He was opposed to an election by the State Legislatures. In explaining his reasons it was necessary to observe the twofold relation in which the people would stand,—first, as citizens of the General Government; and secondly, as citizens of their particular State. The General Government was meant for them in the first capacity: the State Governments in the second. Both governments were derived from the people—both meant for the people—both therefore ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the citizens to their State Governments, were applicable to their relation to the General Government; and in forming the latter we ought to proceed by abstracting as much as possible from the idea of the State Governments. With respect to the province and object of the General Government they should be considered as having no existence. The election of the second branch by the Legislatures will introduce

and cherish local interests and local prejudices. The General Government is not an assemblage of States, but of individuals, for certain political purposes; it is not meant for the States, but for the individuals composing them; the *individuals*, therefore, not the *States*, ought to be represented in it. A proportion in this representation can be preserved in the second, as well as in the first, branch; and the election can be made by electors chosen by the people for that purpose. He moved an amendment to that effect; which was not seconded.

Mr. ELLSWORTH saw no reason for departing from the mode contained in the Report. Whoever chooses the member, he will be a citizen of the State he is to represent; and will feel the same spirit, and act the same part, whether he be appointed by the people or the Legislature. Every State has its particular views and prejudices, which will find their way into the general council, through whatever channel they may flow. Wisdom was one of the characteristics which it was in contemplation to give the second branch,—would not more of it issue from the Legislatures than from an immediate election by the people? He urged the necessity of maintaining the existence and agency of the States. Without their co-operation it would be impossible to support a republican government over so great an extent of country. An army could scarcely render it practicable. The largest States are the worst governed. Virginia is obliged to acknowledge her incapacity to extend her government to Kentucky. Massachusetts cannot keep the peace one hundred miles from her capital, and is now forming an army for its

support. How long Pennsylvania may be free from a like situation, cannot be foreseen. If the principles and materials of our Government are not adequate to the extent of these single States, how can it be imagined that they can support a single government throughout the United States? The only chance of supporting a General Government lies in grafting it on those of the individual States.

Doctor JOHNSON urged the necessity of preserving the State Governments, which would be at the mercy of the General Government on Mr. WILSON's plan.

Mr. MADISON thought it would obviate difficulty if the present Resolution were postponed, and the eighth taken up, which is to fix the right of suffrage in the second branch.

Mr. WILLIAMSON professed himself a friend to such a system as would secure the existence of the State Governments. The happiness of the people depended on it. He was at a loss to give his vote as to the Senate until he knew the number of its members. In order to ascertain this, he moved to insert, after "second branch of the National Legislature," the words, "who shall bear such proportion to the number of the first branch as one to ——" He was not seconded.

Mr. MASON. It has been agreed on all hands that an efficient government is necessary; that, to render it such, it ought to have the faculty of self-defence; that to render its different branches effectual, each of them ought to have the same power of self-defence. He did not wonder that such an agreement should have prevailed on these points. He only wondered

that there should be any disagreement about the necessity of allowing the State Governments the same self-defence. If they are to be preserved, as he conceived to be essential, they certainly ought to have this power; and the only mode left of giving it to them was by allowing them to appoint the second branch of the National Legislature.

Mr. BUTLER, observing that we were put to difficulties at every step by the uncertainty whether an equality or a ratio of representation would prevail finally in the second branch, moved to postpone the fourth Resolution, and to proceed to the eighth Resolution on that point. Mr. MADISON seconded him.

On the question,—New York, Virginia, South Carolina, Georgia, aye—4; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, no—7.

On a question to postpone the fourth, and take up the seventh, Resolution,—Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—5; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, no—6.

On the question to agree, “that the members of the second branch be chosen by the individual Legislatures,”—Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye—9; Pennsylvania, Virginia, no—2.*²²⁹

* It must be kept in view that the largest States, particularly Pennsylvania and Virginia, always considered the choice of the second branch by the State Legislatures as opposed to a proportional representation, to which they were attached as a fundamental principle of just government. The smaller States, who had opposite views, were reinforced by the members from the large States most anxious to secure the importance of the State Governments.

On a question on the clause requiring the age of thirty years at least,—it was unanimously agreed to.

On a question to strike out the words, “sufficient to ensure their independence,” after the word “term,”—it was agreed to.

The clause, that the second branch hold their offices for a term of “seven years,” being considered,—

Mr. GORHAM suggests a term of “four years,” one fourth to be elected every year.

Mr. RANDOLPH supported the idea of rotation, as favorable to the wisdom and stability of the corps; which might possibly be always sitting, and aiding the Executive, and moves, after “seven years,” to add, “to go out in fixed proportion;” which was agreed to.

Mr. WILLIAMSON suggests “six years,” as more convenient for rotation than seven years.

Mr. SHERMAN seconds him.

Mr. READ proposed that they should hold their offices “during good behaviour.” Mr. R. MORRIS seconds him.

General PINCKNEY proposed “four years.” A longer time would fix them at the seat of government. They would acquire an interest there, perhaps transfer their property, and lose sight of the States they represent. Under these circumstances, the distant States would labor under great disadvantages.²⁴⁰

Mr. SHERMAN moved to strike out “seven years,” in order to take questions on the several propositions.

On the question to strike out “seven,”—Massachusetts, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, aye—7; Penn-

sylvania, Delaware, Virginia, no—3; Maryland, divided.

On the question to insert "six years," which failed, five States being, aye; five, no; and one, divided,—Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, aye—5; Massachusetts, New York, New Jersey, South Carolina, Georgia, no—5; Maryland divided.

On a motion to adjourn, the votes were, five for, five against it; and one divided,—Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, aye—5; Massachusetts, New York, North Carolina, South Carolina, Georgia, no—5; Maryland divided.

On the question for "five years," it was lost,—Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, aye—5; Massachusetts, New York, New Jersey, South Carolina, Georgia, no—5; Maryland divided.

Adjourned.

TUESDAY, JUNE 26TH.

In Convention,—The duration of the second branch being under consideration,—

Mr. GORHAM moved to fill the blank with "six years," one-third of the members to go out every second year.

Mr. WILSON seconded the motion.

General PINCKNEY opposed six years, in favor of four years. The States, he said, had different interests. Those of the Southern, and of South Carolina in particular, were different from the

Northern. If the Senators should be appointed for a long term, they would settle in the State where they exercised their functions, and would in a little time be rather the representatives of that, than of the State appointing them.²⁴¹

Mr. READ moved that the term be nine years. This would admit of a very convenient rotation, one third going out triennially. He would still prefer "during good behaviour;" but being little supported in that idea, he was willing to take the longest term that could be obtained.

Mr. BROOM seconded the motion.

Mr. MADISON. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be, to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people, that they themselves were liable to temporary

errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest, that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, would be, that they themselves, as well as a numerous body of representatives, were liable to err, also, from fickleness and passion. A necessary fence against this danger would be, to select a portion of enlightened citizens, whose limited number, and firmness, might seasonably interpose against impetuous counsels. It ought, finally, to occur to a people deliberating on a government for themselves, that as different interests necessarily result from the liberty meant to be secured, the major interest might, under sudden impulses, be tempted to commit injustice on the minority. In all civilized countries the people fall into different classes, having a real or supposed difference of interests. There will be creditors and debtors; farmers, merchants, and manufacturers. There will be, particularly, the distinction of rich and poor. It was true, as had been observed (by Mr. PINCKNEY), we had not among us those hereditary distinctions of rank which were a great source of the contests in the ancient governments, as well as the modern States of Europe; nor those extremes of wealth or poverty, which characterize the latter. We cannot, however, be regarded, even at this time, as one homo-

geneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country ; but symptoms of a levelling spirit, as we have understood, have sufficiently appeared in a certain quarter, to give notice of the future danger. How is this danger to be guarded against, on the republican principles ? How is the danger, in all cases of interested coalitions to oppress the minority, to be guarded against ? Among other means, by the establishment of a body, in the government, sufficiently respectable for its wisdom and virtue to aid, on such emergencies, the preponderance of justice, by throwing its weight into that scale. Such being the objects of the second branch in the proposed Government, he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger ; but, in pursuing his particular ideas on the subject, he should require that the long term allowed to the second branch should not commence till such a period of life as would render a perpetual disqualification to be re-elected, little inconvenient, either in a public

or private view. He observed, that as it was more than probable we were now digesting a plan which in its operation would decide for ever the fate of republican government, we ought, not only to provide every guard to liberty that its preservation could require, but be equally careful to supply the defects which our own experience had particularly pointed out.

Mr. SHERMAN. Government is instituted for those who live under it. It ought, therefore to be so constituted as not to be dangerous to their liberties. The more permanency it has, the worse, if it be a bad government. Frequent elections are necessary to preserve the good behaviour of rulers. They also tend to give permanency to the government, by preserving that good behaviour, because it ensures their re-election. In Connecticut elections have been very frequent, yet great stability and uniformity, both as to persons and measures, have been experienced from its original establishment to the present time; a period of more than a hundred and thirty years. He wished to have provision made for steadiness and wisdom, in the system to be adopted; but he thought six, or four, years would be sufficient. He should be content with either.

Mr. READ wished it to be considered by the small States, that it was their interest that we should become one people as much as possible; that State attachments should be extinguished as much as possible; that the Senate should be so constituted as to have the feelings of citizens of the whole.

Mr. HAMILTON. He did not mean to enter particularly into the subject. He concurred with **Mr. MADISON** in thinking we were now to decide forever

the fate of republican government; and that if we did not give to that form due stability and wisdom, it would be disgraced and lost among ourselves, disgraced and lost to mankind forever. He acknowledged himself not to think favorably of republican government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their government as high as possible. He professed himself to be as zealous an advocate for liberty as any man whatever; and trusted he should be as willing a martyr to it, though he differed as to the form in which it was most eligible. He concurred, also, in the general observations of Mr. MADISON on the subject, which might be supported by others if it were necessary. It was certainly true, that nothing like an equality of property existed; that an inequality would exist as long as liberty existed, and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great and fundamental distinction in society. When the Tribunitial power had levelled the boundary between the *patricians* and *plebeians*, what followed? The distinction between rich and poor was substituted. He meant not, however, to enlarge on the subject. He rose principally to remark, that Mr. SHERMAN seemed not to recollect that one branch of the proposed Government was so formed as to render it particularly the guardians of the poorer orders of citizens; nor to have adverted to the true causes of the stability which had been exemplified in Connecticut. Under the British system, as well as the Federal, many of the great powers appertaining to government, par-

ticularly all those relating to foreign nations, were not in the hands of the government there. Their internal affairs, also, were extremely simple, owing to sundry causes, many of which were peculiar to that country. Of late the Government had entirely given way to the people, and had in fact suspended many of its ordinary functions, in order to prevent those turbulent scenes which had appeared elsewhere. He asks Mr. SHERMAN, whether the State, at this time, dare impose and collect a tax on the people? To these causes, and not to the frequency of elections, the effect, as far as it existed, ought to be chiefly ascribed.

Mr. GERRY wished we could be united in our ideas concerning a permanent Government. All aim at the same end, but there are great differences as to the means. One circumstance, he thought, should be carefully attended to. There was not a one-thousandth part of our fellow-citizens who were not against every approach towards monarchy,—will they ever agree to a plan which seems to make such an approach? The Convention ought to be extremely cautious in what they hold out to the people. Whatever plan may be proposed will be espoused with warmth by many, out of respect to the quarter it proceeds from, as well as from an approbation of the plan itself. And if the plan should be of such a nature as to rouse a violent opposition, it is easy to foresee that discord and confusion will ensue; and it is even possible that we may become a prey to foreign powers. He did not deny the position of Mr. MADISON, that the majority will generally violate justice when they have an interest in so doing; but did

not think there was any such temptation in this country. Our situation was different from that of Great Britain; and the great body of lands yet to be parcelled out and settled would very much prolong the difference. Notwithstanding the symptoms of injustice which had marked many of our public councils, they had not proceeded so far as not to leave hopes that there would be a sufficient sense of justice and virtue for the purpose of government. He admitted the evils arising from a frequency of elections, and would agree to give the Senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.

Mr. WILSON did not mean to repeat what had fallen from others, but would add an observation or two which he believed had not yet been suggested. Every nation may be regarded in two relations, first, to its own citizens; secondly, to foreign nations. It is, therefore, not only liable to anarchy and tyranny within, but has wars to avoid and treaties to obtain from abroad. The Senate will probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign nations. The true reason why Great Britain has not yet listened to a commercial treaty with us has been, because she had no confidence in the stability or efficacy of our Government. Nine years, with a rotation, will provide these desirable qualities; and give our Government an advantage in this respect over monarchy itself. In a monarchy, much must always depend on the temper of the man. In such a body, the personal character will

be lost in the political. He would add another observation. The popular objection against appointing any public body for a long term, was, that it might, by gradual encroachments, prolong itself, first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection, that as one-third would go out triennially, there would be always three divisions holding their places for unequal times, and consequently acting under the influence of different views, and different impulses.

On the question for nine years, one-third to go out triennially,—Pennsylvania, Delaware, Virginia, aye—3; Massachusetts, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no—8.

On the question for six years, one-third to go out biennially,—Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye—7; New York, New Jersey, South Carolina, Georgia, no—4.⁹⁴³

The clause of the fourth Resolution, “to receive fixed stipends by which they may be compensated for their services” being considered,—

General PINCKNEY proposed, that no salary should be allowed. As this (the Senatorial) branch was meant to represent the wealth of the country, it ought to be composed of persons of wealth; and if no allowance was to be made, the wealthy alone would undertake the service. He moved to strike out the clause.

Doctor FRANKLIN seconded the motion. He wished the Convention to stand fair with the people.

There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended, we might be chargeable with having carved out places for ourselves.

On the question,—Massachusetts, Connecticut,* Pennsylvania, Maryland, South Carolina, aye—5; New York, New Jersey, Delaware, Virginia, North Carolina, Georgia, no—6.

Mr. WILLIAMSON moved to change the expression into these words, to wit, "to receive a compensation for the devotion of their time to the public service." The motion was seconded by Mr. ELLSWORTH, and agreed to by all the States except South Carolina. It seemed to be meant only to get rid of the word "fixed," and leave greater room for modifying the provision on this point.

Mr. ELLSWORTH moved to strike out, "to be paid out of the National Treasury," and insert, "to be paid by their respective States." If the Senate was meant to strengthen the Government, it ought to have the confidence of the States. The States will have an interest in keeping up a representation, and will make such provision for supporting the members as will ensure their attendance.

Mr. MADISON considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of six years. They would, if this motion should be agreed to, hold their places during pleasure; during the pleasure of the State Legislatures. One great end

* Quere. Whether Connecticut should not be, no, and Delaware, aye?

J. M.

of the institution was, that being a firm, wise and impartial body, it might not only give stability to the General Government, in its operations on individuals, but hold an even balance among different States. The motion would make the Senate, like Congress, the mere agents and advocates of State interests and views, instead of being the impartial umpires and guardians of justice and the general good. Congress had lately, by the establishment of a board with full powers to decide on the mutual claims between the United States and the individual States, fairly acknowledged themselves to be unfit for discharging this part of the business referred to them by the Confederation.

Mr. DAYTON considered the payment of the Senate by the States as fatal to their independence. He was decided for paying them out of the National Treasury.

On the question for payment of the Senate to be left to the States, as moved by Mr. ELLSWORTH, it passed in the negative,—Connecticut, New York, New Jersey, South Carolina, Georgia, aye—5; Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no—6.²⁴

Col. MASON. He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was, to secure the rights of property. To give them weight and firmness for this purpose, a considerable duration in office was thought necessary. But a longer term than six years would be of no avail in this respect, if needy persons should be appointed. He suggested, therefore, the propriety

of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

A question was then taken, whether the words "to be paid out of the National Treasury," should stand,—Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, aye—5; Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, no—6.

Mr. BUTLER moved to strike out the ineligibility of Senators to *State offices*.

Mr. WILLIAMSON seconded the motion.

Mr. WILSON remarked the additional dependence this would create in the Senators on the States. The longer the time, he observed, allotted to the officer, the more complete will be the dependence, if it exists at all.

General PINCKNEY was for making the States, as much as could be conveniently done, a part of the General Government. If the Senate was to be appointed by the States, it ought, in pursuance of the same idea, to be paid by the States; and the States ought not to be barred from the opportunity of calling members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

Mr. WILLIAMSON moved a Resolution, so penned as to admit of the two following questions,—first, whether the members of the Senate should be ineligible to, and incapable of holding, offices *under the United States*; secondly, whether &c. under the *particular States*.

On the question to postpone, in order to consider Mr. WILLIAMSON'S Resolution,—Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—8; Massachusetts, New York, New Jersey, no—3.²⁴⁵

Mr. GERRY and Mr. MADISON move to add to Mr. WILLIAMSON'S first question, "and for one year thereafter."

On this amendment,—Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye—7; Massachusetts, New Jersey, Pennsylvania, Georgia, no—4.

On Mr. WILLIAMSON'S first question as amended, viz, "ineligible and incapable &c. for one year &c."—agreed to unanimously.

On the second question as to ineligibility, &c. to *State offices*,—Massachusetts, Pennsylvania, Virginia, aye—3; Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, no—8.

The fifth Resolution, "that each branch have the right of originating acts," was agreed to, *nem. con.*²⁴⁶

Adjourned.

WEDNESDAY, JUNE 27TH.

In Convention,—Mr. RUTLEDGE moved to postpone the sixth Resolution, defining the powers of Congress, in order to take up the seventh and eighth, which involved the most fundamental points, the rules of suffrage in the two branches; which was agreed to, *nem. con.*

A question being proposed on the seventh Resolution, declaring that the suffrage in the first branch should be according to an equitable ratio,—

Mr. L. MARTIN contended, at great length, and with great eagerness, that the General Government was meant merely to preserve the State Governments, not to govern individuals. That its powers ought to be kept within narrow limits. That if too little power was given to it, more might be added; but that if too much, it could never be resumed. That individuals, as such, have little to do, but with their own States; that the General Government has no more to apprehend from the States composing the Union, while it pursues proper measures, than a government over individuals has to apprehend from its subjects. That to resort to the citizens at large for their sanction to a new government, will be throwing them back into a state of nature; that the dissolution of the State Governments is involved in the nature of the process; that the people have no right to do this, without the consent of those to whom they have delegated their power for State purposes. Through their tongues only they can speak, through their ears only can hear. That the States have shewn a good disposition to comply with the acts of Congress, weak, contemptibly weak, as that body has been; and have failed through inability alone to comply. That the heaviness of the private debts, and the waste of property during the war, were the chief causes of this inability,—that he did not conceive the instances mentioned by Mr. MADISON, of compacts between Virginia and Maryland, between Pennsylvania and New Jersey, or of

troops raised by Massachusetts for defence against the rebels, to be violations of the Articles of Confederation. That an equal vote in each State was essential to the Federal idea, and was founded in justice and freedom, not merely in policy. That though the States may give up this right of sovereignty, yet they had not, and ought not. That the States, like individuals, were in a state of nature equally sovereign and free. In order to prove that individuals in a state of nature are equally free and independent, he read passages from Locke, Vattel, Lord Somers, Priestley. To prove that the case is the same with states, till they surrender their equal sovereignty, he read other passages in Locke and Vattel, and also Rutherford. That the States, being equal, cannot treat or confederate so as to give up an equality of votes, without giving up their liberty. That the propositions on the table were a system of slavery for ten States. That as Virginia, Massachusetts and Pennsylvania have forty-two ninetieths of the votes, they can do as they please, without a miraculous union of the other ten. That they will have nothing to do but to gain over one of the ten, to make them complete masters of the rest; that they can then appoint an Executive, and Judiciary, and Legislature for them, as they please. That there was, and would continue, a natural predilection and partiality in men for their own States; that the states, particularly the smaller, would never allow a negative to be exercised over their laws: that no State, in ratifying the Confederation, had objected to the equality of votes; that the complaints at present ran not against this equality, but

the want of power. That sixteen members from Virginia would be more likely to act in concert, than a like number formed of members from different States. That instead of a junction of the small States as a remedy, he thought a division of the large States would be more eligible. This was the substance of a speech which was continued more than three hours. He was too much exhausted, he said, to finish his remarks, and reminded the House that he should to-morrow resume them.

Adjourned.

THURSDAY, JUNE 28TH.

In Convention,—Mr. L. MARTIN resumed his discourse, contending that the General Government ought to be formed for the States, not for individuals: that if the States were to have votes in proportion to their numbers of people, it would be the same thing, whether their Representatives were chosen by the Legislatures or the people; the smaller States would be equally enslaved. That if the large States have the same interest with the smaller, as was urged, there could be no danger in giving them an equal vote; they would not injure themselves, and they could not injure the large ones, on that supposition, without injuring themselves; and if the interests were not the same, the inequality of suffrage would be dangerous to the smaller States. That it will be in vain to propose any plan offensive to the rulers of the States, whose influence over the people will certainly prevent their adopting it. That the large States were weak at present in pro-

portion to their extent ; and could only be made formidable to the small ones by the weight of their votes. That in case a dissolution of the Union should take place, the small States would have nothing to fear from their power ; that if, in such a case, the three great States should league themselves together, the other ten could do so too ; and that he had rather see partial confederacies take place, than the plan on the table. This was the substance of the residue of his discourse, which was delivered with much diffuseness, and considerable vehemence.⁹⁷

Mr. LANSING and Mr. DAYTON moved to strike out "not," so that the seventh article might read, "that the right of suffrage in the first branch ought to be according to the rule established by the Confederation."

Mr. DAYTON expressed great anxiety that the question might not be put till to-morrow, Governor LIVINGSTON being kept away by indisposition, and the representation of New Jersey thereby suspended

Mr. WILLIAMSON thought, that, if any political truth could be grounded on mathematical demonstration, it was, that if the States were equally sovereign now, and parted with equal proportions of sovereignty, that they would remain equally sovereign. He could not comprehend how the smaller States would be injured in the case, and wished some gentleman would vouchsafe a solution of it. He observed that the small States, if they had a plurality of votes, would have an interest in throwing the burdens off their own shoulders on those of the large ones. He begged that the expected addition of new States from the westward might be ta-

ken into view. They would be small States; they would be poor States; they would be unable to pay in proportion to their numbers, their distance from market rendering the produce of their labor less valuable; they would consequently be tempted to combine for the purpose of laying burdens on commerce and consumption, which would fall with greater weight on the old States.

Mr. MADISON said, he was much disposed to concur in any expedient, not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor that it was necessary for the safety of the small States against the large States. That it was not just, had been conceded by Mr. BREARLY and Mr. PATTERSON themselves. The expedient proposed by them was a new partition of the territory of the United States. The fallacy of the reasoning drawn from the equality of sovereign states, in the formation of compacts, lay in confounding mere treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, and making laws for the government of them. If France, England and Spain were to enter into a treaty for the regulation of commerce, &c., with the Prince of Monacho, and four or five other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. Would the case be the same,

if a Council were to be formed of deputies from each, with authority and discretion to raise money, levy troops, determine the value of coin, &c.? Would thirty or forty millions of people submit their fortunes into the hands of a few thousands? If they did, it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are counties of the same States represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the Representatives in the National Legislature. Is it because the larger have more at stake than the smaller? The case will be the same with the larger and smaller States. Is it because the laws are to operate immediately on their persons and properties? The same is the case, in some degree, as the Articles of Confederation stand; the same will be the case, in a far greater degree, under the plan proposed to be substituted. In the cases of captures, of piracies, and of offences in a Federal army, the property and persons of individuals depend on the laws of Congress. By the plan proposed a complete power of taxation, the highest prerogative of supremacy, is proposed to be vested in the National Government. Many other powers are added which assimilate it to the government of individual States. The negative proposed on the State laws will make it an essential branch of the State Legislatures, and of course will require that it should be exercised by a body, established on like principles with the branches of those Legislatures. That it is not necessary to secure the

small States against the large ones, he conceived to be equally obvious. Was a combination of the large ones dreaded? This must arise either from some interest common to Virginia, Massachusetts and Pennsylvania, and distinguishing them from the other States; or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation, they could not have been more effectually separated from each other, by the most jealous citizen of the most jealous States. In point of manners, religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other States. In point of the staple productions, they were as dissimilar as any three other States in the Union. The staple of Massachusetts was *fish*, of Pennsylvania *flour*, of Virginia *tobacco*. Was a combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The Journals of Congress did not present any peculiar association of these States in the votes recorded. It had never been seen that different counties in the same State, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations. Experience rather taught a contrary lesson. Among individuals of superior eminence and weight in society, rivalships were much more frequent than coalitions. Among independent nations, pre-eminent over their neighbours, the same remark was verified. Carthage and Rome tore one another to pieces, instead of uniting their forces to devour the weaker nations of the earth. The Houses of Austria and

France were hostile as long as they remained the greatest powers of Europe. England and France have succeeded to the pre-eminence and to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of ancient and modern confederacies, we find the same effect from the same cause. The contentions, not the coalitions, of Sparta, Athens, and Thebes, proved fatal to the smaller members of the Amphictyonic confederacy. The contentions, not the combinations, of Russia and Austria, have distracted and oppressed the German Empire. Were the large States formidable, *singly*, to their smaller neighbours? On this supposition, the latter ought to wish for such a General Government as will operate with equal energy on the former as on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force. Here again, experience was an instructive monitor. What is the situation of the weak compared with the strong, in those stages of civilization in which the violence of individuals is least controlled by an efficient government? The heroic period of ancient Greece, the feudal licentiousness of the middle ages of Europe, the existing condition of the American savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no control, but the nominal authority of the law of nations? Is not the danger to the former exactly in proportion to their weakness? But there are cases still more in point. What was the condi-

tion of the weaker members of the Amphictyonic confederacy? Plutarch (see Life of Themistocles) will inform us, that it happened but too often, that the strongest cities corrupted and awed the weaker, and that judgment went in favor of the more powerful party. What is the condition of the lesser States in the German confederacy? We all know that they are exceedingly trampled upon, and that they owe their safety, as far as they enjoy it, partly to their enlisting themselves under the rival banners of the pre-eminent members, partly to alliances with neighbouring princes, which the constitution of the Empire does not prohibit. What is the state of things in the lax system of the Dutch confederacy? Holland contains about half the people, supplies about half the money, and by her influence silently and indirectly governs the whole republic. In a word, the two extremes before us are, a perfect separation, and a perfect incorporation of the thirteen States. In the first case, they would be independent nations, subject to no law but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case, the smaller States would have every thing to fear from the larger. In the last they would have nothing to fear. The true policy of the small States, therefore, lies in promoting those principles, and that form of government, which will most approximate the States to the condition of counties. Another consideration may be added. If the General Government be feeble, the larger States, distrusting its continuance, and foreseeing that their importance and security may depend on their own

size and strength, will never submit to a partition. Give to the General Government sufficient energy and permanency, and you remove the objection. Gradual partitions of the large, and junctions of the small States, will be facilitated, and time may effect that equalization which is wished for by the small States now, but can never be accomplished at once.²⁴⁸

Mr. WILSON. The leading argument of those who contend for equality of votes among the States is, that the States, as such, being equal, and being represented, not as districts of individuals, but in their political and corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning, the representation of the boroughs in England, which has been allowed on all hands to be the rotten part of the Constitution, is perfectly right and proper. They are, like the States, represented in their corporate capacity; like the States, therefore, they are entitled to equal voices—Old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of complaint lies with Old Sarum: for London instead of two, which is her proper share, sends four representatives to Parliament.²⁴⁹

Mr. SHERMAN. The question is, not what rights naturally belong to man, but how they may be most equally and effectually guarded in society. And if some give up more than others, in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means. The rich man who enters into society along with

the poor man gives up more than the poor man, yet with an equal vote he is equally safe. Were he to have more votes than the poor man, in proportion to his superior stake, the rights of the poor man would immediately cease to be secure. This consideration prevailed when the Articles of Confederation were formed.²⁰⁰

The determination of the question, for striking out the word "not," was put off till to-morrow, at the request of the Deputies from New York.

DOCTOR FRANKLIN. Mr. President, The small progress we have made after four or five weeks close attendance and continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ayes—is, methinks, a melancholy proof of the imperfection of the human understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those republics which, having been formed with the seeds of their own dissolution, now no longer exist. And we have viewed modern states all round Europe, but find none of their constitutions suitable to our circumstances.

In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights, to illuminate our understandings? In the beginning of the contest with Great Britain, when we were

sensible of danger, we had daily prayer in this room for the divine protection. Our prayers, sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend? Or do we imagine that we no longer need his assistance? I have lived, Sir, a long time, and the longer I live, the more convincing proofs I see of this truth—that *God governs in the affairs of men*. And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, Sir, in the sacred writings, that “except the Lord build the house they labor in vain that build it.” I firmly believe this; and I also believe that without his concurring aid we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded; and we ourselves shall become a reproach and by-word down to future ages. And what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war, and conquest.

I therefore beg leave to move—that henceforth prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this Assembly every morning before we proceed to

business, and that one or more of the clergy of this city be requested to officiate in that service.

Mr. SHERMAN seconded the motion.

Mr. HAMILTON and several others expressed their apprehensions, that, however proper such a resolution might have been at the beginning of the Convention, it might at this late day, in the first place, bring on it some disagreeable animadversions; and in the second, lead the public to believe that the embarrassments and dissensions within the Convention had suggested this measure. It was answered, by Doctor FRANKLIN, Mr. SHERMAN, and others, that the past omission of a duty could not justify a further omission; that the rejection of such a proposition would expose the Convention to more unpleasant animadversions than the adoption of it; and that the alarm out of doors that might be excited for the state of things within would at least be as likely to do good as ill.

Mr. WILLIAMSON observed, that the true cause of the omission could not be mistaken. The Convention had no funds.

Mr. RANDOLPH proposed, in order to give a favorable aspect to the measure, that a sermon be preached at the request of the Convention on the Fourth of July, the anniversary of Independence; and thenceforward prayers, &c. to be read in the Convention every morning. Doctor FRANKLIN seconded this motion. After several unsuccessful attempts for silently postponing this matter by adjourning, the adjournment was at length carried, without any vote on the motion.²²¹

FRIDAY, JUNE 29TH.

In Convention.—DOCTOR JOHNSON. The controversy must be endless whilst gentlemen differ in the grounds of their arguments; those on one side considering the States as districts of people composing one political society: those on the other, considering them as so many political societies. The fact is, that the States do exist as political societies, and a government is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow, that if the States, as such, are to exist, they must be armed with some power of self-defence? This is the idea of Colonel MASON, who appears to have looked to the bottom of this matter. Besides the aristocratic and other interests, which ought to have the means of defending themselves, the States have their interests as such, and are equally entitled to like means. On the whole he thought, that, as in some respects the States are to be considered in their political capacity, and in others as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined; that in *one* branch the *people* ought to be represented, in the *other* the *States*.

MR. GORHAM. The States, as now confederated, have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small States, which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the

Union would be an event unhappy for all; but surely the large States would be least unable to take care of themselves, and to make connections with one another. The weak, therefore, were most interested in establishing some general system for maintaining order. If, among individuals composed partly of weak, and partly of strong, the former most need the protection of law and government, the case is exactly the same with weak and powerful States. What would be the situation of Delaware, (for these things he found must be spoken out, and it might as well be done at first as last), what would be the situation of Delaware in case of a separation of the States? Would she not be at the mercy of Pennsylvania? Would not her true interest lie in being consolidated with her; and ought she not now to wish for such a union with Pennsylvania, under one Government, as will put it out of the power of Pennsylvania to oppress her? Nothing can be more ideal than the danger apprehended by the States from their being formed into one nation. Massachusetts was originally three colonies, viz.; old Massachusetts, Plymouth, and the Province of Maine. These apprehensions existed then. An incorporation took place; all parties were safe and satisfied; and every distinction is now forgotten. The case was similar with Connecticut and New Haven. The dread of union was reciprocal; the consequence of it equally salutary and satisfactory. In like manner, New Jersey has been made one society out of two parts. Should a separation of the States take place, the fate of New Jersey would be worst of all. She has no foreign commerce, and

can have but little. Pennsylvania and New York will continue to levy taxes on her consumption. If she consults her interest, she would beg of all things to be annihilated. The apprehensions of the small States ought to be appeased by another reflection. Massachusetts will be divided. The Province of Maine is already considered as approaching the term of its annexation to it: and Pennsylvania will probably not increase, considering the present state of her population, and other events that may happen. On the whole, he considered a union of the States as necessary to their happiness, and a firm General Government as necessary to their union. He should consider it his duty, if his colleagues viewed the matter in the same light he did, to stay here as long as any other State would remain with them, in order to agree on some plan that could, with propriety, be recommended to the people.

Mr. ELLSWORTH did not despair. He still trusted that some good plan of government would be devised and adopted.

Mr. READ. He should have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little States, he thought, had not much to fear. He suspected that the large States felt their want of energy, and wished for a General Government to supply the defect. Massachusetts was evidently laboring under her weakness, and he believed Delaware would not be in much danger if in her neighbourhood. Delaware had enjoyed tranquillity, and he flattered himself would continue to do so. He was not, however, so selfish as not to wish for a good General Govern-

ment. In order to obtain one, the whole States must be incorporated. If the States remain, the representatives of the large ones will stick together, and carry every thing before them. The Executive, also, will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the States in existence. They must be done away. The ungranted lands, also, which have been assumed by particular States, must be given up. He repeated his approbation of the plan of Mr. HAMILTON, and wished it to be substituted for that on the table.

Mr. MADISON agreed with Doctor JOHNSON, that the mixed nature of the Government ought to be kept in view; but thought too much stress was laid on the rank of the States as political societies. There was a gradation, he observed, from the smallest corporation, with the most limited powers, to the largest empire, with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the States, as now confederated. Their laws, in relation to the paramount law of the Confederacy, were analagous to that of bye-laws to the supreme law within a State. Under the proposed Government the powers of the States will be much farther reduced. According to the views of every member, the General Government will have powers far beyond those exercised by the British Parliament when the States were part of the British Empire. It will, in particular, have the power, without the consent of the State Legislatures, to levy money directly from the people themselves; and therefore,

not to divest such *unequal* portions of the people as composed the several States of an *equal* voice, would subject the system to the reproaches and evils which have resulted from the vicious representation in Great Britain.

He entreated the gentlemen representing the small States to renounce a principle which was confessedly unjust; which could never be admitted; and which, if admitted, must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been said that the want of energy in the large States would be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the States against all external danger. Let each State depend on itself for its security, and let apprehensions arise of danger from distant powers or from neighbouring States, and the languishing condition of all the States, large as well as small, would soon be transformed into vigorous and high-toned Governments. His great fear was, that their Governments would then have too much energy; that this might not only be formidable in the large to the small States, but fatal to the internal liberty of all. The same causes which have rendered the old world the theatre of incessant wars, and have banished liberty from the face of it, would soon produce the same effects here. The weakness and jealousy of the small States would quickly introduce some regular military force, against sudden danger from their powerful neighbours. The example would be followed by others, and would soon become

universal. In time of actual war, great discretionary powers are constantly given to the Executive magistrate. Constant apprehension of war has the same tendency to render the head too large for the body. A standing military force, with an overgrown Executive, will not long be safe companions to liberty. The means of defence against foreign danger have been always the instruments of tyranny at home. Among the Romans it was a standing maxim, to excite a war whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved, the people. It is, perhaps, questionable, whether the best concerted system of absolute power in Europe, could maintain itself, in a situation where no alarms of external danger could tame the people to the domestic yoke. The insular situation of Great Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defence necessary, and admitted a kind of defence which could not be used for the purpose of oppression. These consequences, he conceived, ought to be apprehended, whether the States should run into a total separation from each other, or should enter into partial confederacies. Either event would be truly deplorable; and those who might be necessary to either, could never be forgiven by their country, nor by themselves.²²²

* Mr. HAMILTON observed, that individuals forming political societies modify their rights differently, with regard to suffrage. Examples of it are found in all

* From this date he was absent till the 13th of August.

the States. In all of them, some individuals are deprived of the right altogether, not having the requisite qualification of property. In some of the States, the right of suffrage is allowed in some cases, and refused in others. To vote for a member in one branch, a certain quantum of property; to vote for a member in another branch of the Legislature, a higher quantum of property, is required. In like manner, States may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller, share of it. But as States are a collection of individual men, which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition? Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been said, that if the smaller States renounce their *equality*, they renounce at the same time their *liberty*. The truth is, it is a contest for power, not for liberty. Will the men composing the small States be less free than those composing the larger? The State of Delaware having forty thousand souls will lose *power*, if she has one-tenth only of the votes allowed to Pennsylvania having four hundred thousand; but will the people of Delaware *be less free*, if each citizen has an equal vote with each citizen of Pennsylvania? He admitted that common residence within the same State would produce a certain degree of attachment; and that this principle might have a certain influence on public affairs. He thought, however, that this might, by some precautions, be in a great measure excluded: and that no material inconvenience could result from it; as there could not

be any ground for combination among the States whose influence was most dreaded. The only considerable distinction of interests lay between the carrying and non-carrying States, which divides, instead of uniting, the largest States. No considerable inconvenience had been found from the division of the State of New York into different districts of different sizes.

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign nations having American dominion are, and must be, jealous of us. Their representatives betray the utmost anxiety for our fate; and for the result of this meeting, which must have an essential influence on it. It had been said, that respectability in the eyes of foreign nations was not the object at which we aimed; that the proper object of republican government was domestic tranquillity and happiness. This was an ideal distinction. No government could give us tranquillity and happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak, and sensible of our weakness. Henceforward, the motives will become feebler, and the difficulties greater. It is a miracle that we are

now here, exercising our tranquil and free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a re-production of them.²⁶⁸

Mr. PIERCE considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Congress were advocates for local advantages. State distinctions must be sacrificed, as far as the general good required, but without destroying the States. Though from a small State, he felt himself a citizen of the United States.

Mr. GERRY urged, that we never were independent States, were not such now, and never could be, even on the principles of the Confederation. The States, and the advocates for them, were intoxicated with the idea of their *sovereignty*. He was a member of Congress at the time the Federal Articles were formed. The injustice of allowing each State an equal vote was long insisted on. He voted for it, but it was against his judgment, and under the pressure of public danger, and the obstinacy of the lesser States. The present Confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Congress. If they do, Congress will probably be kept up till the new system should be adopted. He lamented that, instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negotiators.

Mr. L. MARTIN remarked, that the language, of

the States being *sovereign and independent*, was once familiar and understood; though it seemed now so strange and obscure. He read those passages in the Articles of Confederation which describe them in that language.

On the question, as moved by Mr. LANSING, shall the word "not" be struck out?—Connecticut, New York, New Jersey, Delaware, aye—4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—6; Maryland, divided.

On the motion to agree to the clause as reported, "that the rule of suffrage in the first branch ought not to be according to that established by the Articles of the Confederation,"—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—6; Connecticut, New York, New Jersey, Delaware, no—4; Maryland, divided.

Doctor JOHNSON and Mr. ELLSWORTH moved to postpone the residue of the clause, and take up the eighth Resolution.

On the question,—Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; Massachusetts, Delaware, no—2.

Mr. ELLSWORTH moved, "that the rule of suffrage in the second branch be the same with that established by the Articles of Confederation." He was not sorry, on the whole, he said, that the vote just passed had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the second branch. We were partly national, partly federal. The proportional representation in the first branch was

conformable to the national principle, and would secure the large States against the small. An equality of voices was conformable to the federal principle, and was necessary to secure the small States against the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other, and if no compromise should take place, our meeting would not only be in vain, but worse than in vain. To the eastward, he was sure Massachusetts was the only State that would listen to a proposition for excluding the States, as equal political societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it was at once cutting the body of America in two, and, as he supposed would be the case, somewhere about this part of it. The large States he conceived would, notwithstanding the equality of votes, have an influence that would maintain their superiority. Holland, as had been admitted (by Mr. MADISON), had, notwithstanding a like equality in the Dutch confederacy, a prevailing influence in the public measures. The power of self-defence was essential to the small States. Nature had given it to the smallest insect of the creation. He could never admit that there was no danger of combinations among the large States. They will like individuals find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater if they were contiguous, and had a more immediate and common interest. A defensive combination of the small States was rendered more

difficult by their greater number. He would mention another consideration of great weight. The existing Confederation was founded on the equality of the States in the article of suffrage,—was it meant to pay no regard to this antecedent plighted faith. Let a strong Executive, a Judiciary, and Legislative power, be created, but let not too much be attempted, by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added when the necessity shall be more fully experienced.

Mr. BALDWIN could have wished that the powers of the general Legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of Mr. ELLSWORTH, though he did not like the Resolution as it stood in the Report of the Committee of the Whole. He thought the second branch ought to be the representation of property, and that, in forming it, therefore, some reference ought to be had to the relative wealth of their constituents, and to the principles on which the Senate of Massachusetts was constituted. He concurred with those who thought it would be impossible for the General Legislature to extend its cares to the local matters of the States.⁸⁴

Adjourned.

SATURDAY, JUNE 30TH.

In Convention,—Mr. BREARLY moved that the President write to the Executive of New Hamp-

shire, informing it that the business depending before the Convention was of such a nature as to require the immediate attendance of the Deputies of that State. In support of his motion, he observed that the difficulties of the subject, and the diversity of opinions called for all the assistance we could possibly obtain. (It was well understood that the object was to add New Hampshire to the number of States opposed to the doctrine of proportional representation, which it was presumed, from her relative size, she must be adverse to).

Mr. PATTERSON seconded the motion.

Mr. RUTLEDGE could see neither the necessity nor propriety of such a measure. They are not unapprized of the meeting, and can attend if they choose. Rhode Island might as well be urged to appoint and send deputies. Are we to suspend the business until the Deputies arrive? If we proceed, he hoped all the great points would be adjusted before the letter could produce its effect.

Mr. KING said he had written more than once as a private correspondent, and the answer gave him every reason to expect that State would be represented very shortly, if it should be so at all. Circumstances of a personal nature had hitherto prevented it. A letter could have no effect.

Mr. WILSON wished to know, whether it would be consistent with the rule or reason of secrecy, to communicate to New Hampshire that the business was of such a nature as the motion described. It would spread a great alarm. Besides, he doubted the propriety of soliciting any State on the subject, the meeting being merely voluntary.

On motion of Mr. BREARLY,

New York, New Jersey, aye—2; Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, no—5; Maryland, divided; Pennsylvania, Delaware, Georgia, not on the floor.²⁸

The motion of Mr. ELLSWORTH being resumed, for allowing each State an equal vote in the second branch,—

Mr. WILSON did not expect such a motion after the establishment of the contrary principle in the first branch; and considering the reasons which would oppose it, even if an equal vote had been allowed in the first branch. The gentleman from Connecticut (Mr. ELLSWORTH) had pronounced, that if the motion should not be acceded to, of all the States north of Pennsylvania one only would agree to any General Government. He entertained more favorable hopes of Connecticut and of the other Northern States. He hoped the alarms exceeded their cause, and that they would not abandon a country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles; if a separation must take place, it could never happen on better grounds. The votes of yesterday against the just principle of representation, were as twenty-two to ninety, of the people of America. Taking the opinions to be the same on this point, and he was sure, if there was any room for change, it could not be on the side of the majority, the question will be, shall less than

one-fourth of the United States withdraw themselves from the Union, or shall more than three-fourths renounce the inherent, indisputable and unalienable rights of men, in favor of the artificial system of States? If issue must be joined, it was on this point he would choose to join it. The gentleman from Connecticut, in supposing that the preponderance secured to the majority in the first branch had removed the objections to an equality of votes in the second branch for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to control, in all cases whatsoever, the sentiments and interests of the majority. Seven States will control six: seven States, according to the estimates that had been used, composed twenty-four ninetieths of the whole people. It would be in the power, then, of less than one-third to overrule two-thirds, whenever a question should happen to divide the States in that manner. Can we forget for whom we are forming a Government? Is it for *men*, or for the imaginary beings called *States*? Will our honest constituents be satisfied with metaphysical distinctions? Will they, ought they to, be satisfied with being told, that the one-third compose the greater number of States? The rule of suffrage ought on every principle to be the same in the second as in the first branch. If the Government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined and temporary. This will expand with the expansion, and grow with the growth of the United States. Much has been said of an imaginary combination of three

States. Sometimes a danger of monarchy, sometimes of aristocracy, has been charged on it. No explanation, however, of the danger has been vouchsafed. It would be easy to prove, both from reason and history, that rivalships would be more probable than coalitions; and that there are no coinciding interests that could produce the latter. No answer has yet been given to the observations of Mr. MADISON on this subject. Should the Executive magistrate be taken from one of the large States, would not the other two be thereby thrown into the scale with the other States? Whence, then, the danger of monarchy? Are the people of the three large States more aristocratic than those of the small ones? Whence, then, the danger of aristocracy from their influence? It is all a mere illusion of names. We talk of States, till we forget what they are composed of. Is a real and fair majority the natural hot-bed of aristocracy? It is a part of the definition of this species of government, or rather of tyranny, that the smaller number governs the greater. It is true that a majority of States in the second branch cannot carry a law against a majority of the people in the first. But this removes half only of the objection. Bad governments are of two sorts,—first, that which does too little; secondly, that which does too much; that which fails through weakness, and that which destroys through oppression. Under which of these evils do the United States at present groan? Under the weakness and inefficiency of its government. To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the United States fet-

tered precisely as heretofore; with the additional mortification of seeing the good purposes of the fair representation of the people in the first branch, defeated in the second. Twenty-four will still control sixty-six. He lamented that such a disagreement should prevail on the point of representation; as he did not foresee that it would happen on the other point most contested, the boundary between the general and the local authorities. He thought the States necessary and valuable parts of a good system.

Mr. ELLSWORTH. The capital objection of Mr. WILSON, "that the minority will rule the majority," is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British Constitution, the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation, a negative on the laws, as a necessary defence of their peculiar rights against the encroachments of the Commons? No instance of a confederacy has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are razing the foundations of the building, when we need only repair the roof. No salutary measure has been lost for want of *a majority of the States* to favor it. If security be all that the great States wish for, the first branch secures them. The danger of combinations among

them is not imaginary. Although no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him. But he could easily conceive cases in which they might result from such combinations. Suppose, that, in pursuance of some commercial treaty or arrangement, three or four free ports and no more were to be established, would not combinations be formed in favor of Boston, Philadelphia, and some port of the Chesapeake? A like concert might be formed in the appointment of the great offices. He appealed again to the obligations of the Federal pact, which was still in force, and which had been entered into with so much solemnity; persuading himself that some regard would still be paid to the plighted faith under which each State, small as well as great, held an equal right of suffrage in the general councils. His remarks were not the result of partial or local views. The State he represented (Connecticut) held a middle rank.^m

Mr. MADISON did justice to the able and close reasoning of Mr. ELLSWORTH, but must observe that it did not always accord with itself. On another occasion, the large States were described by him as the aristocratic States, ready to oppress the small. Now the small are the House of Lords, requiring a negative to defend them against the more numerous Commons. Mr. ELLSWORTH had also erred in saying that no instance had existed in which confederated states had not retained to themselves a perfect equality of suffrage. Passing over the German system, in which the King of Prussia has nine voices, he reminded Mr. ELLSWORTH of the Lycian confede-

racy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of government. Had the fact been as stated by Mr. ELLSWORTH, it would have been of little avail to him, or rather would have strengthened the arguments against him; the history and fate of the several confederacies, modern as well as ancient, demonstrating some radical vice in their structure. In reply to the appeal of Mr. ELLSWORTH to the faith plighted in the existing federal compact, he remarked, that the party claiming from others an adherence to a common engagement, ought at least to be guiltless itself of a violation. Of all the States, however, Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts, from which no State was free, the Legislature of that State had, by a pretty recent vote, *positively refused* to pass a law for complying with the requisitions of Congress, and had transmitted a copy of the vote to Congress. It was urged, he said, continually, that an equality of votes in the second branch was not only necessary to secure the small, but would be perfectly safe to the large ones; whose majority in the first branch was an effectual bulwark. But notwithstanding this apparent defence, the majority of States might still injure the majority of the people. In the first place, they could *obstruct* the wishes and interests of the majority. Secondly, they could *extort* measures repugnant to the wishes and interest of the majority. Thirdly, they could *impose* measures adverse thereto; as the second branch will probably exercise some great powers,

in which the first will not participate. He admitted that every peculiar interest, whether in any class of citizens, or any description of States, ought to be secured as far as possible. Wherever there is danger of attack, there ought to be given a constitutional power of defence. But he contended that the States were divided into different interests, not by their difference of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having or not having slaves. These two causes concurred in forming the great division of interests in the United States. It did not lie between the large and small States. It lay between the Northern and Southern; and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth, that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was, that, instead of proportioning the votes of the States in both branches, to their respective numbers of inhabitants, computing the slaves in the ratio of five to three, they should be represented in one branch according to the number of free inhabitants only; and in the other according to the whole number, counting the slaves as free. By this arrangement the Southern scale would have the advantage in one House, and the Northern in the other. He had been restrained from proposing this expedient by two considerations; one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself; the other was the inequality of pow-

ers that must be vested in the two branches, and which would destroy the equilibrium of interests.

Mr. ELLSWORTH assured the House, that, whatever might be thought of the Representatives of Connecticut, the State was entirely Federal in her disposition. He appealed to her great exertions during the war, in supplying both men and money. The muster-rolls would show she had more troops in the field than Virginia. If she had been delinquent, it had been from inability, and not more so than other States.

Mr. SHERMAN. Mr. MADISON animadverted on the delinquency of the States, when his object required him to prove that the constitution of Congress was faulty. Congress is not to blame for the faults of the States. Their measures have been right, and the only thing wanting has been a further power in Congress to render them effectual.

Mr. DAVIE was much embarrassed, and wished for explanations. The Report of the Committee, allowing the Legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will, according to this rule, be ninety members in the outset, and the number will increase as new States are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the Report, as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors, chosen by the people for that purpose, was, he conceived, liable to an insuperable difficulty. The larger counties or

districts, thrown into a general district, would certainly prevail over the smaller counties or districts, and merit in the latter would be excluded altogether. The Report, therefore, seemed to be right in referring the appointment to the Legislatures, whose agency in the general system did not appear to him objectionable, as it did to some others. The fact was, that the local prejudices and interests which could not be denied to exist, would find their way into the national councils, whether the Representatives should be chosen by the Legislatures, or by the people themselves. On the other hand, if a proportional representation was attended with insuperable difficulties, the making the Senate the representative of the States looked like bringing us back to Congress again, and shutting out all the advantages expected from it. Under this view of the subject, he could not vote for any plan for the Senate yet proposed. He thought that, in general, there were extremes on both sides. We were partly federal, partly national, in our union; and he did not see why the Government might not in some respects operate on the States, in others on the people.

Mr. WILSON admitted the question concerning the number of Senators to be embarrassing. If the smallest States be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest States will contain a hundred thousand souls at least. Let there be then one Senator in each, for every hundred thousand souls, and let the States not having that number of in-

habitants be allowed one. He was willing himself to submit to this temporary concession to the small States; and threw out the idea as a ground of compromise.

Doctor FRANKLIN. The diversity of opinions turns on two points. If a proportional representation takes place, the small States contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large States say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner, here, both sides must part with some of their demands, in order that they may join in some accommodating proposition. He had prepared one which he would read, that it might lie on the table for consideration. The proposition was in the words following :

“That the Legislatures of the several States shall choose and send an equal number of delegates, namely, —————, who are to compose the second branch of the General Legislature.

“That in all cases or questions wherein the sovereignty of individual States may be affected, or whereby their authority over their own citizens may be diminished, or the authority of the General Government within the several States augmented, each State shall have equal suffrage.

“That in the appointment of all civil officers of the General Government, in the election of whom the second branch may by the constitution have part, each State shall have equal suffrage.

"That in fixing the salaries of such officers, and in all allowances for public services, and generally in all appropriations and dispositions of money to be drawn out of the general Treasury; and in all laws for supplying that Treasury, the Delegates of the several States shall have suffrage in proportion to the sums which their respective States do actually contribute to the Treasury."

Where a ship had many owners, this was the rule of deciding on her expedition. He had been one of the ministers from this country to France during the joint war, and would have been very glad if allowed a vote in distributing the money to carry it on.

Mr. KING observed, that the simple question was, whether each State should have an equal vote in the second branch; that it must be apparent to those gentlemen who liked neither the motion for this equality, nor the Report as it stood, that the Report was as susceptible of melioration as the motion; that a reform would be nugatory and nominal only, if we should make another Congress of the proposed Senate; that if the adherence to an equality of votes was fixed and unalterable, there could not be less obstinacy on the other side; and that we were in fact cut asunder already, and it was in vain to shut our eyes against it. That he was, however, filled with astonishment, that, if we were convinced that every *man* in America was secured in all his rights, we should be ready to sacrifice this substantial good to the phantom of *State* sovereignty. That his feelings were more harrowed and his fears more agitated for his country than he could express; that he

conceived this to be the last opportunity of providing for its liberty and happiness: that he could not, therefore, but repeat his amazement, that when a just government, founded on a fair representation of the *people* of America, was within our reach, we should renounce the blessing, from an attachment to the ideal freedom and importance of *States*. That should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than sit down under a Government founded on a vicious principle of representation, and which must be as short-lived as it would be unjust. He might prevail on himself to accede to some such expedient as had been hinted by Mr. WILSON; but he never could listen to an equality of votes as proposed in the motion.

Mr. DAYTON. When assertion is given for proof, and terror substituted for argument, he presumed they would have no effect, however eloquently spoken. It should have been shown that the evils we have experienced have proceeded from the equality now objected to; and that the seeds of dissolution for the State Governments are not sown in the General Government. He considered the system on the table as a novelty, an amphibious monster; and was persuaded that it never would be received by the people.

Mr. MARTIN would never confederate, if it could not be done on just principles.

Mr. MADISON would acquiesce in the concession hinted by Mr. WILSON, on condition that a due independence should be given to the Senate. The plan in its present shape makes the Senate absolutely

dependent on the States. The Senate, therefore, is only another edition of Congress. He knew the faults of that body, and had used a bold language against it. Still he would preserve the State rights as carefully as the trial by jury.

Mr. BEDFORD contended, that there was no middle way between a perfect consolidation, and a mere confederacy of the States. The first is out of the question; and in the latter they must continue, if not perfectly, yet equally, sovereign. If political societies possess ambition, avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it, let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large States evidently seeking to aggrandize themselves at the expense of the small? They think, no doubt, that they have right on their side, but interest had blinded their eyes. Look at Georgia. Though a small State at present, she is actuated by the prospect of soon being a great one. South Carolina is actuated both by present interest, and future prospects. She hopes, too, to see the other States cut down to her own dimensions. North Carolina has the same motives of present and future interest. Virginia follows. Maryland is not on that side of the question. Pennsylvania has a direct and future interest. Massachusetts has a decided and palpable interest in the part she takes. Can it be expected that the small States will act from pure disinterestness. Look at Great Britain. Is the representation there less une-

qual? But we shall be told again, that that is the rotten part of the Constitution. Have not the boroughs, however, held fast their constitutional rights? And are we to act with greater purity than the rest of mankind? An exact proportion in the representation is not preserved in any one of the States. Will it be said that an inequality of power will not result from an inequality of votes. Give the opportunity, and ambition will not fail to abuse it. The whole history of mankind proves it. The three large States have a common interest to bind them together in commerce. But whether a combination, as we supposed, or a competition, as others supposed, shall take place among them, in either case the small States must be ruined. We must, like Solon, make such a government as the people will approve. Will the smaller States ever agree to the proposed degradation of them? It is not true that the people will not agree to enlarge the powers of the present Congress. The language of the people has been, that Congress ought to have the power of collecting an impost, and of coercing the States where it may be necessary. On the first point they have been explicit, and, in a manner, unanimous in their declarations. And must they not agree to this, and similar measures, if they ever mean to discharge their engagements? The little States are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation. We have been told, with a dictatorial air, that this is the last moment for a fair trial in favor of a good government. It will be the last, indeed, if the propositions reported from the Committee go forth to

the people. He was under no apprehensions. The large States dare not dissolve the Confederation. If they do, the small ones will find some foreign ally, of more honor and good faith, who will take them by the hand, and do them justice. He did not mean, by this, to intimidate or alarm. It was a natural consequence, which ought to be avoided by enlarging the Federal powers, not annihilating the Federal system. This is what the people expect. All agree in the necessity of a more efficient government, and why not make such an one as they desire?²⁶⁷

Mr. ELLSWORTH. Under a National Government, he should participate in the national security, as remarked by Mr. KING; but that was all. What he wanted was domestic happiness. The National Government could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes, therefore, for the preservation of his rights, to the State Governments. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence, as much as a new-born infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so.

Mr. KING was for preserving the States in a subordinate degree, and as far as they could be necessary for the purposes stated by Mr. ELLSWORTH. He did not think a full answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. Expedients might be devised, as he conceived, that would give them all the secu-

erty the nature of things would admit of. In the establishment of societies, the Constitution was to the Legislature, what the laws were to individuals. As the fundamental rights of individuals are secured by express provisions in the State Constitutions, why may not a like security be provided for the rights of States in the National Constitution? The Articles of Union between England and Scotland furnish an example of such a provision, in favor of sundry rights of Scotland. When that union was in agitation, the same language of apprehension which has been heard from the smaller States, was in the mouths of the Scotch patriots. The articles, however, have not been violated, and the Scotch have found an increase of prosperity and happiness. He was aware that this will be called a mere *paper security*. He thought it a sufficient answer to say, that if fundamental articles of compact are no sufficient defence against physical power, neither will there be any safety against it, if there be no compact. He could not sit down without taking some notice of the language of the honorable gentleman from Delaware (Mr. BEDFORD). It was not he that had uttered a dictatorial language. This intemperance had marked the honorable gentleman himself. It was not he who, with a vehemence unprecedented in that House, had declared himself ready to turn his hopes from our common country, and court the protection of some foreign hand. This, too, was the language of the honorable member himself. He was grieved that such a thought had entered his heart. He was more grieved that such an expression had dropped from his lips. The gentleman

could only excuse it to himself on the score of passion. For himself, whatever might be his distress, he would never court relief from a foreign power.

Adjourned.

MONDAY, JULY 2d.

In Convention,—On the question for allowing each State one vote in the second branch, as moved by Mr. ELLSWORTH, it was lost, by an equal division of votes,—Connecticut, New York, New Jersey, Delaware, Maryland,* aye—5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no—5; Georgia, divided (Mr. Baldwin aye, Mr. Houston, no),

Mr. PINCKNEY thought an equality of votes in the second branch inadmissible. At the same time, candor obliged him to admit, that the large States would feel a partiality for their own citizens, and give them a preference in appointments: that they might also find some common points in their commercial interests, and promote treaties favorable to them. There is a real distinction between the Northern and Southern interests. North Carolina, South Carolina and Georgia, in their rice and indigo, had a peculiar interest which might be sacrificed. How, then, shall the larger States be prevented from administering the General Government as they please, without being themselves unduly subjected to the will of the smaller? By allowing them some, but

* Mr. JENIFER not being present, Mr. MARTIN alone voted.

not a full, proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congress have failed in almost every effort for an amendment of the Federal system. Nothing has prevented a dissolution of it, but the appointment of this Convention; and he could not express his alarms for the consequence of such an event. He read his motion to form the States into classes, with an apportionment of Senators among them (see Article 4, of his plan—ante, page 737.)

General PINCKNEY was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Doctor Franklin, (q. v. June 30, page 1009). Some compromise seemed to be necessary, the States being exactly divided on the question for an equality of votes in the second branch. He proposed that a Committee consisting of a member from each State should be appointed to devise and report some compromise.

Mr. L. MARTIN had no objection to a commitment, but no modifications whatever could reconcile the smaller States to the least diminution of their equal sovereignty.

Mr. SHERMAN. We are now at a full stop; and nobody, he supposed, meant that we should break up without doing something. A committee he thought most likely to hit on some expedient.

Mr. GOUVERNEUR MORRIS* thought a Committee advisable, as the Convention had been equally di-

* He had just returned from New York, having left the Convention a few days after it commenced business.

vided. He had a stronger reason also. The mode of appointing the second branch tended, he was sure, to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses of the first branch. Every man of observation had seen in the democratic branches of the State Legislatures, precipitation—in Congress, changeableness—in every department, excesses against personal liberty, private property, and personal safety. What qualities are necessary to constitute a check in this case? *Abilities* and *virtue* are equally necessary in both branches. Something more, then, is now wanted. In the first place, the checking branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. Vices, as they exist, must be turned against each other. In the second place, it must have great personal property; it must have the aristocratic spirit; it must love to lord it through pride. Pride is, indeed, the great principle that actuates both the poor and the rich. It is this principle which in the former resists, in the latter abuses, authority. In the third place, it should be independent. In religion, the creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body should be as independent, and as firm, as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the Senatorial branches of the Legislatures from a servile complaisance to the democratic.

If the second branch is to be dependent, we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; he hoped so. The rich will strive to establish their dominion, and enslave the rest. They always did. They always will. The proper security against them is to form them into a separate interest. The two forces will then control each other. Let the rich mix with the poor, and in a commercial country they will establish an oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are but men; and we are not to expect any particular interference of Heaven in our favor. By thus combining, and setting apart, the aristocratic interest, the popular interest will be combined against it. There will be a mutual check and mutual security. In the fourth place, an independence for life, involves the necessary permanency. If we change our measures nobody will trust us,—and how avoid a change of measures, but by avoiding a change of men? Ask any man if he confides in Congress—if he confides in the State of Pennsylvania—if he will lend his money, or enter into contract? He will tell you, no. He sees no stability. He can repose no confidence. If Great Britain were to explain her refusal to treat with us, the same reasoning would be employed. He disliked the exclusion of the second branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers, during the war, from civil appointments. It deprives the Executive of the prin-

cial source of influence. If danger be apprehended from the Executive, what a left-handed way is this of obviating it! If the son, the brother, or the friend can be appointed, the danger may be even increased, as the disqualified father, &c. can then boast of a disinterestedness which he does not possess. Besides, shall the best, the most able, the most virtuous citizens not be permitted to hold offices? Who then are to hold them? He was also against paying the Senators. They will pay themselves, if they can. If they cannot, they will be rich, and can do without it. Of such the second branch ought to consist; and none but such can compose it, if they are not to be paid. He contended, that the Executive should appoint the Senate, and fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please, it will come to the same thing. The members being independent, and for life, may be taken as well from one place as from another. It should be considered, too, how the scheme could be carried through the States. He hoped there was strength of mind enough in this House to look truth in the face. He did not hesitate, therefore, to say that loaves and fishes must bribe the demagogues. They must be made to expect higher offices under the General, than the State Governments. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose and defeat the plan. He perceived that the first branch was to be chosen by the people of the States, the second by those chosen by the people. Is not here a government by the States—a govern-

ment by compact between Virginia in the first and second branch, Massachusetts in the first and second branch, &c.? This is going back to mere treaty. It is no government at all. It is altogether dependent on the States, and will act over again the part which Congress has acted. A firm government alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere, if we do not, by such a government, keep them within their proper spheres. We should remember that the people never act from reason alone. The rich will take the advantage of their passions, and make these the instruments for oppressing them. The result of the contest will be a violent aristocracy, or a more violent despotism. The schemes of the rich will be favored by the extent of the country. The people in such distant parts cannot communicate and act in concert. They will be the dupes of those who have more knowledge and intercourse. The only security against encroachments, will be a select and sagacious body of men, instituted to watch against them on all sides. He meant only to hint these observations, without grounding any motion on them.

Mr. RANDOLPH favored the commitment, though he did not expect much benefit from the expedient. He animadverted on the warm and rash language of Mr. BEDFORD on Saturday; reminded the small States that if the large States should combine, some danger of which he did not deny, there would be a check in the revisionary power of the Executive; and intimated, that, in order to render this still more

effectual, he would agree, that in the choice of an Executive each State should have an equal vote. He was persuaded that two such opposite bodies as Mr. MORRIS had planned could never long co-exist. Dissensions would arise, as has been seen even between the Senate and House of Delegates in Maryland; appeals would be made to the people; and in a little time commotions would be the result. He was far from thinking the large States could subsist of themselves, any more than the small; an avulsion would involve the whole in ruin; and he was determined to pursue such a scheme of government as would secure us against such a calamity.²⁰

Mr. STRONG was for the commitment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures.

Doctor WILLIAMSON. If we do not concede on both sides, our business must soon be at an end. He approved of the commitment, supposing that, as the Committee would be a smaller body, a compromise would be pursued with more coolness.

Mr. WILSON objected to the Committee, because it would decide according to that very rule of voting, which was opposed on one side. Experience in Congress had also proved the inutility of Committees consisting of members from each State.

Mr. LANSING would not oppose the commitment, though expecting little advantage from it.

Mr. MADISON opposed the commitment. He had rarely seen any other effect than delay from *such*

committees in Congress. Any scheme of compromise that could be proposed in the Committee might as easily be proposed in the House; and the report of the Committee, where it contained merely the *opinion* of the Committee, would neither shorten the discussion, nor influence the decision of the House.

Mr. GERRY was for the commitment. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the state we should be thrown into by the failure of the Union. We should be without an umpire to decide controversies, and must be at the mercy of events. What, too, is to become of our treaties—what of our foreign debts—what of our domestic? We must make concessions on both sides. Without these, the Constitutions of the several States would never have been formed.

On the question for committing, generally,—Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; New Jersey, Delaware, no—2.

On the question for committing it “to a member from each State,”—Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—10; Pennsylvania, no—1.

The Committee, elected by ballot, were, Mr. GERRY, Mr. ELLSWORTH, Mr. YATES, Mr. PATTERSON, Dr. FRANKLIN, Mr. BEDFORD, Mr. MARTIN, Mr. MASON, Mr. DAVY, Mr. RUTLEDGE, Mr. BALDWIN.

That time might be given to the Committee, and to such as chose to attend to the celebrations on the

anniversary of Independence the Convention adjourned till Thursday.

THURSDAY, JULY 5TH.

In Convention,—Mr. GERRY delivered in, from the Committee appointed on Monday last, the following Report:²⁰⁰

“The Committee to whom was referred the eighth Resolution of the Report from the Committee of the Whole House, and so much of the seventh as has not been decided on, submit the following Report:

“That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted.

“1. That in the first branch of the Legislature each of the States now in the Union shall be allowed one member for every forty thousand inhabitants, of the description reported in the seventh Resolution of the Committee of the Whole House: that each State not containing that number shall be allowed one member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public Treasury but in pursuance of appropriations to be originated in the first branch.

“2. That in the second branch, each State shall have an equal vote.”*

* This Report was founded on a motion in the Committee made by Doctor

Mr. GORHAM observed, that, as the report consisted of propositions mutually conditional, he wished to hear some explanations touching the grounds on which the conditions were estimated.

Mr. GERRY. The Committee were of different opinions, as well as the Deputations from which the Committee were taken; and agreed to the Report merely in order that some ground of accommodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree, will not be under any obligation to support the Report.

Mr. WILSON thought the Committee had exceeded their powers.

Mr. MARTIN was for taking the question on the whole Report.

Mr. WILSON was for a division of the question; otherwise it would be a leap in the dark.

Mr. MADISON could not regard the privilege of originating money bills as any concession on the side of the small States. Experience proved that it had no effect. If seven States in the upper branch wished a bill to be originated, they might surely find some member from some of the same States in the lower

FRANKLIN. It was barely acquiesced in by the members from the States opposed to an equity of votes in the second branch, and was evidently considered by the members on the other side, as a gaining of their point. A motion was made by Mr. SHERMAN, (who acted in the place of Mr. ELLSWORTH who was kept away by indisposition), in the Committee, to the following effect, "that each State should have an equal vote in the second branch; provided that no decision therein should prevail unless the majority of States concurring should also comprise a majority of the inhabitants of the United States." This motion was not much deliberated on, nor approved, in the Committee. A similar proviso had been proposed, in the debates on the Articles of Confederation, in 1777, to the articles giving certain powers to "nine States." See Journals of Congress for 1777. page 462.

branch, who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other House. Bills could be negatived, that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the first branch, the use of that body, as a check, would be lost. If the first branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shown, both in Great Britain, and the States having a similar regulation, that it was a source of frequent and obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion, when judged by its own merits. It could not, therefore, be deemed any concession on the present, and left in force all the objections which had prevailed against allowing each State an equal voice. He conceived that the Convention was reduced to the alternative, of either departing from justice in order to conciliate the smaller States, and the minority of the people of the United States, or of displeasing these, by justly gratifying the larger States and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention, with justice and a majority of the people on their side, had nothing to fear. With injustice and the minority on their side, they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused and supported by the ca-

lightened and impartial part of America, and which they could themselves vindicate and urge. It should be considered, that, although at first many may judge of the system recommended by their opinion of the Convention, yet finally all will judge of the Convention by the system. The merits of the system alone can finally and effectually obtain the public suffrage. He was not apprehensive that the people of the small States would obstinately refuse to accede to a government founded on just principles, and promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other States, rather than submit to such a Government; much less could he suspect that she would pursue the rash policy, of courting foreign support, which the warmth of one of her Representatives (Mr. BEDFORD) had suggested; or if she should, that any foreign nation would be so rash as to hearken to the overture. As little could he suspect that the people of New Jersey, notwithstanding the decided tone of the gentleman from that State, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the commerce of the neighbouring States. A review of other States would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was, no doubt, much to be desired. Satisfaction to all the States, in the first instance, still more so. But if the principal States

comprehending a majority of the people of the United States, should concur in a just and judicious plan, he had the firmest hopes that all the other States would by degrees accede to it.

Mr. BUTLER said, he could not let down his idea of the people of America so far as to believe they would, from mere respect to the Convention, adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged, that the second branch ought to represent the States according to their property.

Mr. GOUVERNEUR MORRIS thought the form as well as the matter of the Report objectionable. It seemed, in the first place, to render amendment impracticable. In the next place, it seemed to involve a pledge to agree to the second part, if the first should be agreed to. He conceived the whole aspect of it to be wrong. He came here as a Representative of America; he flattered himself he came here in some degree as a Representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He cannot descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be

known. All that we can infer is, that, if the plan we recommend be reasonable and right, all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger States shall agree, and that the smaller refuse; and let us trace the consequences. The opponents of the system in the smaller States will no doubt make a party, and a noise for a time, but the ties of interest, of kindred, and of common habits, which connect them with other States, will be too strong to be easily broken. In New Jersey, particularly, he was sure a great many would follow the sentiments of Pennsylvania and New York. This country must be united. If persuasion does not unite it, the sword will. He begged this consideration might have its due weight. The scenes of horror attending civil commotion cannot be described; and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traitors of the weaker; and the gallows and halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions, he would not say. Threats that they will be invited have, it seems, been thrown out. He drew the melancholy picture of foreign intrusions, as exhibited in the history of Germany, and urged it as a standing lesson to other nations. He trusted that the gentlemen who may have hazarded such expressions did not entertain them till they reached their own lips. But returning to the Report, he could not think it in any respect calculated for the public good. As the second branch is now con-

stituted, there will be constant disputes and appeals to the States, which will undermine the General Government, and control and annihilate the first branch. Suppose that the Delegates from Massachusetts and Rhode Island, in the upper house, disagree, and that the former are outvoted. What results? They will immediately declare that their State will not abide by the decision, and make such representations as will produce that effect. The same may happen as to Virginia and other States. Of what avail, then, will be what is on paper? State attachments, and State importance, have been the bane of this country. We cannot annihilate, but we may perhaps take out the teeth of, the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular spot. And, after all, how little can be the motive yielded by selfishness for such a policy? Who can say, whether he himself, much less whether his children, will the next year be an inhabitant of this or that State?

Mr. BEDFORD. He found that what he had said, as to the small States being taken by the hand, had been misunderstood,—and he rose to explain. He did not mean that the small States would court the aid and interposition of foreign powers. He meant that they would not consider the federal compact as dissolved until it should be so by the acts of the large States. In this case, the consequence of the breach of faith on their part, and the readiness of the small States to fulfil their engagements, would be that foreign nations having demands on this

Country, would find it their interest^f to take the small States by the hand, in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small States may be driven by oppression. He observed, also, in apology, that some allowance ought to be made for the habits of his profession, in which warmth was natural and sometimes necessary. But is there not an apology in what was said by (Mr. GOUVERNEUR MORRIS), that the sword is to unite—by Mr. GORHAM, that Delaware must be annexed to Pennsylvania, and New Jersey divided between Pennsylvania and New York? To hear such language without emotion, would be to renounce the feelings of a man and the duty of a citizen. As to the propositions of the Committee, the lesser States have thought it necessary to have a security somewhere. This has been thought necessary for the Executive magistrate of the proposed government, who has a sort of negative on the laws; and is it not of more importance that the States should be protected, than that the Executive branch of the Government should be protected? In order to obtain this, the smaller States have conceded as to the constitution of the first branch, and as to money bills. If they be not gratified by correspondent concessions, as to the second branch, is it to be supposed they will ever accede to the plan? And what will be the consequence, if nothing should be done? The condition of the United States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason why defects

might not be supplied by meetings ten, fifteen or twenty years hence.

Mr. ELLSWORTH said, he had not attended the proceedings of the Committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

Mr. WILLIAMSON hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their States, which was not and could not be known. He hoped, also, that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that (Mr. GOUVERNEUR MORRIS) meant that the sword ought to be drawn against the smaller States. He only pointed out the probable consequences of anarchy in the United States. A similar exposition ought to be given of the expressions of (Mr. GORHAM). He was ready to hear the Report discussed; but thought the propositions contained in it the most objectionable of any he had yet heard.

Mr. PATTERSON said that he had, when the report was agreed to in the Committee, reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the sword and the gallows little calculated to produce conviction. He complained of the manner in which Mr. MADISON and Mr. G. MORRIS had treated the small States.

Mr. GERRY. Though he had assented to the Report in the Committee, he had very material objections to it. We were, however, in a peculiar situation. We were neither the same nation, nor different

nations. We ought not, therefore, to pursue the one or the other of these ideas too closely. If no compromise should take place, what will be the consequence. A secession he foresaw would take place; for some gentlemen seemed decided on it. Two different plans will be proposed, and the result no man could foresee. If we do not come to some agreement among ourselves, some foreign sword will probably do the work for us.

Mr. MASON. The Report was meant not as specific propositions to be adopted, but merely as a general ground of accommodation. There must be some accommodation on this point, or we shall make little further progress in the work. Accommodation was the object of the House in the appointment of the Committee, and of the Committee in the report they had made. And, however liable the Report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs, than it was for him, but he would bury his bones in this city, rather than expose his country to the consequences of a dissolution of the Convention without any thing being done.

The first proposition in the Report for fixing the representation in the first branch, "one member for every forty thousand inhabitants," being taken up,—

Mr. GOUVERNEUR MORRIS objected to that scale of apportionment. He thought property ought to be taken into the estimate as well as the number of

inhabitants. Life and liberty were generally said to be of more value than property. An accurate view of the matter would, nevertheless, prove that property was the main object of society. The savage state was more favorable to liberty than the civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property which could only be secured by the restraints of regular government. These ideas might appear to some new, but they were nevertheless just. If property, then, was the main object of government, certainly it ought to be one measure of the influence due to those who were to be affected by the government. He looked forward, also, to that range of new States which would soon be formed in the West. He thought the rule of representation ought to be so fixed, as to secure to the Atlantic States a prevalence in the national councils. The new States will know less of the public interest than these; will have an interest in many respects different; in particular will be little scrupulous of involving the community in wars the burdens and operations of which would fall chiefly on the maritime States. Provision ought, therefore, to be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done, by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have. This would not be unjust, as the western settlers would previously know the conditions on which they were to possess their lands. It would be poli-

tic, as it would recommend the plan to the present, as well as future, interest of the States which must decide the fate of it.

Mr. RUTLEDGE. The gentleman last up had spoken some of his sentiments precisely. Property was certainly the principal object of society. If numbers should be made the rule of representation, the Atlantic States would be subjected to the western. He moved that the first proposition in the Report be postponed, in order to take up the following, viz.: "that the suffrages of the several States be regulated and proportioned according to the sums to be paid towards the general revenue by the inhabitants of each State respectively: that an apportionment of suffrages, according to the ratio aforesaid shall be made and regulated at the end of — years from the first meeting of the Legislature of the United States, and at the end of every — years; but that for the present, and until the period above mentioned, the suffrages shall be for New Hampshire —, for Massachusetts —, &c."

Col. MASON said, the case of new States was not unnoticed in the Committee; but it was thought, and he was himself decidedly of opinion, that if they made a part of the Union, they ought to be subject to no unfavorable discriminations. Obvious considerations required it.

Mr. RANDOLPH concurred with Mr. MASON.

On the question on Mr. RUTLEDGE's motion,— South Carolina, aye—1; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no—9; Georgia, not on the floor. Adjourned.

FRIDAY, JULY 6TH.

In Convention,—MR. GOUVERNEUR MORRIS moved to commit so much of the Report as relates to “one member for every forty thousand inhabitants.” His view was, that they might absolutely fix the number for each State in the first instance; leaving the Legislature at liberty to provide for changes in the relative importance of the States, and for the case of new States.

MR. WILSON seconded the motion; but with a view of leaving the Committee under no implied shackles.

MR. GORHAM apprehended great inconvenience from fixing directly the number of Representatives to be allowed to each State. He thought the number of inhabitants the true guide; though perhaps some departure might be expedient from the full proportion. The States, also, would vary in their relative extent by separations of parts of the largest states. A part of Virginia is now on the point of a separation. In the province of Maine, a Convention is at this time deliberating on a separation from Massachusetts. In such events the number of Representatives ought certainly to be reduced. He hoped to see all the States made small by proper divisions, instead of their becoming formidable as was apprehended to the small States. He conceived, that, let the government be modified as it might, there would be a constant tendency in the State Governments to encroach upon it: it was of importance, therefore, that the extent of the States should be reduced as much, and as fast, as possible.

The stronger the government shall be made in the first instance, the more easily will these divisions be effected; as it will be of less consequence in the opinion of the States, whether they be of great or small extent.

Mr. GERRY did not think with his colleague, that the larger States ought to be cut up. This policy has been inculcated by the middling and small States, ungenerously and contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the States be reduced to the size of counties. If this policy should still actuate the small States, the large ones could not confederate safely with them; but would be obliged to consult their safety by confederating only with one another. He favored the commitment, and thought that representation ought to be in the combined ratio of numbers of inhabitants and of wealth, and not of either singly.

Mr. KING wished the clause to be committed, chiefly in order to detach it from the Report, with which it had no connection. He thought, also, that the ratio of representation proposed could not be safely fixed, since in a century and an half our computed increase of population would carry the number of Representatives to an enormous excess; that the number of inhabitants was not the proper index of ability and wealth; that property was the primary object of society; and that, in fixing a ratio, this ought not to be excluded from the estimate. With regard to new States, he observed that there was something peculiar in the business, which had not been noticed. The United States were now

admitted to be proprietors of the country North West of the Ohio. Congress, by one of their ordinances, have impolitically laid it out into ten States, and have made it a fundamental article of compact with those who may become settlers, that as soon as the number in any one State shall equal that of the smallest of the thirteen original States, it may claim admission into the Union. Delaware does not contain, it is computed, more than thirty-five thousand souls; and for obvious reasons will not increase much for a considerable time. It is possible, then, that if this plan be persisted in by Congress, ten new votes may be added, without a greater addition of inhabitants than are represented by the single vote of Pennsylvania. The plan, as it respects one of the new States, is already irrevocable; the sale of the lands having commenced, and the purchasers and settlers will immediately become entitled to all the privileges of the compact.

Mr. BUTLER agreed to the commitment, if the Committee were to be left at liberty. He was persuaded, that, the more the subject was examined, the less it would appear that the number of inhabitants would be a proper rule of proportion. If there were no other objection, the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old and the new States. He contended strenuously, that property was the only just measure of representation. This was the great object of government; the great cause of war; the great means of carrying it on.

Mr. PINCKNEY saw no good reason for committing.

The value of land had been found, on full investigation, to be an impracticable rule. The contributions of revenue, including imports and exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial States. The number of inhabitants appeared to him the only just and practicable rule. He thought the blacks ought to stand on an equality with the whites; but would agree to the ratio settled by Congress. He contended that Congress had no right, under the Articles of Confederation, to authorize the admission of new States, no such case having been provided for.

Mr. DAVY was for committing the clause, in order to get at the merits of the question arising on the Report. He seemed to think that wealth or property ought to be represented in the second branch; and numbers in the first branch.

On the motion for committing, as made by Mr. GOUVERNEUR MORRIS,—Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—7; New York, New Jersey, Delaware, no—3; Maryland, divided.

The members appointed by ballot were Mr. GOUVERNEUR MORRIS, Mr. GORHAM, Mr. RANDOLPH, Mr. RUTLEDGE, Mr. KING.

Mr. WILSON signified, that his view in agreeing to the commitment was, that the Committee might consider the propriety of adopting a scale similar to that established by the Constitution of Massachusetts, which would give an advantage to the small States without substantially departing from the rule of proportion.

Mr. WILSON and Mr. MASON moved to postpone the clause relating to money bills, in order to take up the clause relating to an equality of votes in the second branch.

On the question of postponement,—New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, aye—8; Massachusetts, Connecticut, North Carolina, no—3.

The clause relating to equality of votes being under consideration,—

Doctor FRANKLIN observed, that this question could not be properly put by itself, the Committee having reported several propositions as mutual conditions of each other. He could not vote for it if separately taken; but should vote for the whole together.

Colonel MASON perceived the difficulty, and suggested a reference of the rest of the Report to the Committee just appointed, that the whole might be brought into one view.

Mr. RANDOLPH disliked the reference to that Committee, as it consisted of members from States opposed to the wishes of the small States, and could not, therefore, be acceptable to the latter.

Mr. MARTIN and Mr. JENIFER moved to postpone the clause till the Committee last appointed should report.

Mr. MADISON observed, that if the uncommitted part of the Report was connected with the part just committed, it ought also to be committed; if not connected, it need not be postponed till report should be made.

On the question for postponing, moved by Mr. MAR-

TIN and Mr. JENIFER,—Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia, aye—6; Pennsylvania, North Carolina, South Carolina, no—3; Massachusetts, New York, divided.

The first clause, relating to the originating of money bills, was then resumed.

Mr. GOUVERNEUR MORRIS was opposed to a restriction of this right in either branch, considered merely in itself, and as unconnected with the point of representation in the second branch. It will disable the second branch from proposing its own money plans, and give the people an opportunity of judging, by comparison, of the merits of those proposed by the first branch.

Mr. WILSON could see nothing like a concession here, on the part of the smaller States. If both branches were to say *yes* or *no*, it was of little consequence which should say *yes* or *no* first, which last. If either was, indiscriminately, to have the right of originating, the reverse of the Report would, he thought, be most proper; since it was a maxim, that the least numerous body was the fittest for deliberation—the most numerous, for decision. He observed that this discrimination had been transcribed from the British into several American Constitutions. But he was persuaded that, on examination of the American experiments, it would be found to be a ‘trifle light as air.’ Nor could he ever discover the advantage of it in the parliamentary history of Great Britain. He hoped, if there was any advantage in the privilege, that it would be pointed out.

Mr. WILLIAMSON thought that if the privilege
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were not common to both branches, it ought rather to be confined to the second, as the bills in that case would be more narrowly watched, than if they originated with the branch having most of the popular confidence.

Mr. MASON. The consideration which weighed with the Committee was, that the first branch would be the immediate representatives of the people; the second would not. Should the latter have the power of giving away the people's money, they might soon forget the source from whence they received it. We might soon have an aristocracy. He had been much concerned at the principles which had been advanced by some gentlemen, but had the satisfaction to find they did not generally prevail. He was a friend to proportional representation in both branches; but supposed that some points must be yielded for the sake of accommodation.

Mr. WILSON. If he had proposed that the second branch should have an independent disposal of public money, the observations of (Colonel MASON) would have been a satisfactory answer. But nothing could be farther from what he had said. His question was, how is the power of the first branch increased, or that of the second diminished, by giving the proposed privilege to the former? Where is the difference, in which branch it begins, if both must concur, in the end?

Mr. GERRY would not say that the concession was a sufficient one on the part of the small States. But he could not but regard it in the light of a concession. It would make it a constitutional principle, that the second branch were not possessed of the

confidence of the people in money matters, which would lessen their weight and influence. In the next place, if the second branch were dispossessed of the privilege, they would be deprived of the opportunity which their continuance in office three times as long as the first branch would give them, of making three successive essays in favor of a particular point.

Mr. PINCKNEY thought it evident that the concession was wholly on one side, that of the large States ; the privilege of originating money bills being of no account.

Mr. GOUVERNEUR MORRIS had waited to hear the good effects of the restriction. As to the alarm sounded, of an aristocracy, his creed was that there never was, nor ever will be, a civilized society without an aristocracy. His endeavour was, to keep it as much as possible from doing mischief. The restriction, if it has any real operation, will deprive us of the services of the second branch in digesting and proposing money bills, of which it will be more capable than the first branch. It will take away the responsibility of the second branch, the great security for good behaviour. It will always leave a plea, as to an obnoxious money bill, that it was disliked, but could not be constitutionally amended, nor safely rejected. It will be a dangerous source of disputes between the two Houses. We should either take the British Constitution altogether, or make one for ourselves. The Executive there has dissolved two Houses, as the only cure for such disputes. Will our Executive be able to apply such a remedy? Every law, directly or indirectly, takes

money out of the pockets of the people. Again, what use may be made of such a privilege in case of great emergency? Suppose an enemy at the door, and money instantly and absolutely necessary for repelling him,—may not the popular branch avail itself of this duress, to extort concessions from the Senate, destructive of the Constitution itself? He illustrated this danger by the example of the Long Parliament's expedients for subverting the House of Lords; concluding, on the whole, that the restriction would be either useless or pernicious.

Doctor FRANKLIN did not mean to go into a justification of the Report; but as it had been asked what would be the use of restraining the second branch from meddling with money bills, he could not but remark, that it was always of importance that the people should know who had disposed of their money, and how it had been disposed of. It was a maxim, that those who feel, can best judge. This end would, he thought, be best attained, if money affairs were to be confined to the immediate representatives of the people. This was his inducement to concur in the Report. As to the danger or difficulty that might arise from a negative in the second branch, where the people would not be proportionally represented, it might easily be got over by declaring that there should be no such negative; or, if that will not do, by declaring that there shall be no such branch at all.

Mr. MARTIN said, that it was understood in the Committee, that the difficulties and disputes which had been apprehended should be guarded against in the detailing of the plan.

Mr. WILSON. The difficulties and disputes will increase with the attempts to define and obviate them. Queen Ann was obliged to dissolve her Parliament, in order to terminate one of these obstinate disputes between the two houses. Had it not been for the mediation of the Crown, no one can say what the result would have been. The point is still *sub judice* in England. He approved of the principles laid down by the Honourable President* (Doctor FRANKLIN) his colleague, as to the expediency of keeping the people informed of their money affairs. But thought they would know as much, and be as well satisfied, in one way as in the other.

General PINCKNEY was astonished that this point should have been considered as a concession. He remarked, that the restriction as to money bills had been rejected on the merits singly considered, by eight States against three; and that the very States which now called it a concession were then against it, as nugatory or improper in itself.

On the question whether the clause relating to money bills in the Report of the Committee consisting of a member from each State, should stand as part of the Report,—Connecticut, New Jersey, Delaware, Maryland, North Carolina, aye—5; Pennsylvania, Virginia, South Carolina, no—3; Massachusetts, New York, Georgia, divided.

A question was then raised, whether the question was carried in the affirmative; there being but

* He was at that time President of the State of Pennsylvania.

five ayes, out of eleven States present. For the words of the Rule, see May 28th.

On this question,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye—9; New York, Virginia, no—2.

(In several preceding instances like votes had *sub silentio* been entered as decided in the affirmative.)

Adjourned.

SATURDAY, JULY 7TH.

In Convention,—The question, shall the clause “allowing each State one vote in the second branch, stand as part of the Report,” being taken up,—

Mr. GERRY. This is the critical question. He had rather agree to it than have no accommodation. A Government short of a proper national plan, if generally acceptable, would be preferable to a proper one which, if it could be carried at all, would operate on discontented States. He thought it would be best to suspend this question till the Committee appointed yesterday should make report.

Mr. SHERMAN supposed that it was the wish of every one that some General Government should be established. An equal vote in the second branch would, he thought, be most likely to give it the necessary vigor. The small States have more vigor in their Governments than the large ones; the more influence therefore the large ones have, the weaker

will be the Government. In the large States it will be most difficult to collect the real and fair sense of the people. Fallacy and undue influence will be practised with most success; and improper men will most easily get into office. If they vote by States in the second branch, and each State has an equal vote, there must be always a majority of States, as well as a majority of the people, on the side of public measures, and the Government will have decision and efficacy. If this be not the case in the second branch, there may be a majority of States against public measures; and the difficulty of compelling them to abide by the public determination will render the Government feebler than it has ever yet been.

Mr. WILSON was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the representatives, than among the constituents; and it would be of little consequence if not established among the latter; and there could be little hope of its being established among them, if the foundation should not be laid in justice and right.

On the question, shall the words stand as part of the Report?—Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, aye—6; Pennsylvania, Virginia, South Carolina, no—3; Massachusetts, Georgia, divided.*

Mr. GERRY thought it would be proper to proceed

* Several votes were given here in the affirmative, or were divided, because another final question was to be taken on the whole Report.

to enumerate and define the powers to be vested in the General Government, before a question on the Report should be taken as to the rule of representation in the second branch.

Mr. MADISON observed, that it would be impossible to say what powers could be safely and properly vested in the Government, before it was known in what manner the States were to be represented in it. He was apprehensive that if a just representation were not the basis of the Government, it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld, and the new Government would be rendered as impotent and as short-lived as the old.

Mr. PATTERSON would not decide whether the privilege concerning money bills were a valuable consideration or not; but he considered the mode and rule of representation in the first branch as fully so; and that after the establishment of that point, the small States would never be able to defend themselves without an equality of votes in the second branch. There was no other ground of accommodation. His resolution was fixed. He would meet the large States on that ground, and no other. For himself, he should vote against the Report, because it yielded too much.

Mr. GOUVERNEUR MORRIS. He had no resolution unalterably fixed except to do what should finally appear to him right. He was against the Report because it maintained the improper constitution of the second branch. It made it another Congress, a mere whisp of straw. It had been said (by Mr.

GERRY), that the new Government would be partly national, partly federal; that it ought in the first quality to protect individuals; in the second, the State. But in what quality was it to protect the aggregate interest of the whole? Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American Empire. It had been one of our greatest misfortunes that the great objects of the nation had been sacrificed constantly to local views; in like manner as the general interest of States had been sacrificed to those of the counties. What is to be the check in the Senate? None; unless it be to keep the majority of the people from injuring particular States. But particular States ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manner detrimental to the whole body: suppose they should give themselves up to foreign influence: Ought they to be protected in such cases? They were originally nothing more than colonial corporations. On the Declaration of Independence, a Government was to be formed. The small States aware of the necessity of preventing anarchy, and taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand, under the new system, greater rights, as men, than their fellow-citizens of the large States. The proper answer to them is, that the same necessity of which they formerly took advantage does not now exist; and that the large States are at liberty now to consider what is

right, rather than what may be expedient. We must have an efficient Government, and if there be an efficiency in the local Governments, the former is impossible. Germany alone proves it. Notwithstanding their common Diet, notwithstanding the great prerogatives of the Emperor, as head of the Empire, and his vast resources, as sovereign of his particular dominions, no union is maintained; foreign influence disturbs every internal operation, and there is no energy whatever in the general government. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse, than the happiness of the people of Germany. Do gentlemen wish this to be the case here? Good God, Sir, is it possible they can so delude themselves? What if all the Charters and Constitutions of the States were thrown into the fire, and all their demagogues into the ocean—what would it be to the happiness of America? And will not this be the case here, if we pursue the train in which the business lies? We shall establish an Aulic Council, without an Emperor to execute its decrees. The same circumstances which unite the people here unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was the same in the Grecian states. The United Netherlands are at this time torn in factions. With these examples before our eyes, shall we form establishments which must necessarily produce the same effects? It is of no consequence from what

districts the second branch shall be drawn, if it be so constituted as to yield an asylum against these evils. As it is now constituted, he must be against its being drawn from the States in equal portions; but shall be ready to join in devising such an amendment of the plan, as will be most likely to secure our liberty and happiness.

Mr. SHERMAN and Mr. ELLSWORTH moved to postpone the question on the Report from the Committee of a member from each State, in order to wait for the Report from the Committee of five last appointed,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, aye—6; New York, Virginia, North Carolina, South Carolina, Georgia, no—5.

Adjourned.

MONDAY, JULY 9TH.

In Convention,—Mr. DANIEL CARROLL, from Maryland, took his seat.

Mr. GOUVERNEUR MORRIS delivered a Report from the Committee of five members, to whom was committed the clause in the Report of the Committee consisting of a member from each State, stating the proper ratio of representatives in the first branch to be as one to every forty thousand inhabitants, as follows, viz:

“The Committee to whom was referred the first clause of the first proposition reported from the Grand Committee, beg leave to report:

“That in the first meeting of the Legislature

the first branch thereof consist of fifty-six members, of which number New Hampshire shall have 2, Massachusetts 7, Rhode Island 1, Connecticut 4, New York 5, New Jersey 3, Pennsylvania 8, Delaware 1, Maryland 4, Virginia 9, North Carolina 5, South Carolina 5, Georgia 2.

"But as the present situation of the States may probably alter, as well in point of wealth as in the number of their inhabitants, that the Legislature be authorized from time to time to augment the number of Representatives. And in case any of the States shall hereafter be divided, or any two or more States united, or any new States created within the limits of the United States, the Legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants."

Mr. SHERMAN wished to know, on what principles or calculations the Report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Congress.

Mr. GORHAM. Some provision of this sort was necessary in the outset. The number of blacks and whites, with some regard to supposed wealth, was the general guide. Fractions could not be observed. The Legislature is to make alterations from time to time, as justice and propriety may require. Two objections prevailed against the rule of one member for every forty thousand inhabitants. The first was, that the representation would soon be too numerous, the second that the Western States, who may have a different interest, might,

if admitted on that principle, by degrees outvote the Atlantic. Both these objections are removed. The number will be small in the first instance, and may be continued so. And the Atlantic States, having the Government in their own hands, may take care of their own interest, by dealing out the right of representation in safe proportions to the Western States. These were the views of the Committee.

Mr. L. MARTIN wished to know whether the Committee were guided in the ratio by the wealth, or number of inhabitants, of the States, or both; noting its variations from former apportionments by Congress.

Mr. GOUVERNEUR MORRIS and Mr. RUTLEDGE moved to postpone the first paragraph, relating to the number of members to be allowed each State in the first instance, and to take up the second paragraph, authorizing the Legislature to alter the number from time to time according to wealth and inhabitants. The motion was agreed to, *nem. con.*

On the question on the second paragraph, taken without any debate,—Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; New York, New Jersey, no—2.

Mr. SHERMAN moved to refer the first part, apportioning the representatives, to a Committee of a member from each State.

Mr. GOUVERNEUR MORRIS seconded the motion; observing that this was the only case in which such committees were useful.

Mr. WILLIAMSON thought it would be necessary to

return to the rule of numbers, but that the Western States stood on different footing. If their property should be rated as high as that of the Atlantic States, then their representation ought to hold a like proportion. Otherwise, if their property was not to be equally rated.

Mr. GOUVERNEUR MORRIS. The Report is little more than a guess. Wealth was not altogether disregarded by the Committee. Where it was apparently in favor of one State whose numbers were superior to the numbers of another, by a fraction only, a member extraordinary was allowed to the former; and so *vice versa*. The Committee meant little more than to bring the matter to a point for the consideration of the House.

Mr. READ asked, why Georgia was allowed two members, when her number of inhabitants had stood below that of Delaware?

Mr. GOUVERNEUR MORRIS. Such is the rapidity of the population of that State, that before the plan takes effect, it will probably be entitled to two Representatives.

Mr. RANDOLPH disliked the Report of the Committee, but had been unwilling to object to it. He was apprehensive that, as the number was not to be changed, till the National Legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the commitment to a member from each State.

Mr. PATTERSON considered the proposed estimate for the future according to the combined rules of numbers and wealth, as too vague. For this reason

New Jersey was against it. He could regard negro slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and like other property entirely at the will of the master. Has a man in Virginia a number of votes in proportion to the number of his slaves? and if negroes are not represented in the States to which they belong, why should they be represented in the General Government. What is the true principle of representation? It is an expedient by which an assembly of certain individuals, chosen by the people, is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then should they be represented? He was also against such an indirect encouragement of the slave trade; observing that Congress, in their Act relating to the change of the eighth Article of Confederation, had been ashamed to use the term "slaves," and had substituted a description.

Mr. MADISON reminded Mr. PATTERSON that his doctrine of representation, which was in its principle the genuine one, must forever silence the pretensions of the small States to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do, if the people of all the States were collectively met. He suggested as a proper ground of compromise, that in the first branch the States should be represented according to their number of free inhabitants; and in the second, which had for one of its primary ob-

jects the guardianship of property, according to the whole number, including slaves.

Mr. BUTLER urged warmly the justice and necessity of regarding wealth in the apportionment of representation.

Mr. KING had always expected, that, as the Southern States are the richest, they would not league themselves with the Northern, unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in commerce, and other advantages which they will derive from the connexion, they must not expect to receive them without allowing some advantages in return. Eleven out of thirteen of the States had agreed to consider slaves in the apportionment of taxation; and taxation and representation ought to go together.

On the question for committing the first paragraph of the Report to a member from each State,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—9; New York, South Carolina, no—2.

The Committee appointed were Messrs. KING, SHERMAN, YATES, BREARLY, GOUVERNEUR MORRIS, READ, CARROLL, MADISON, WILLIAMSON, RUTLEDGE, HOUSTON.

Adjourned.

TUESDAY, JUNE 10TH.

In Convention,—Mr. KING reported, from the Committee yesterday appointed, “that the States at the

first meeting of the General Legislature, should be represented by sixty-five members, in the following proportions, to wit:—New Hampshire, by 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3.”

Mr. RUTLEDGE moved that New Hampshire be reduced from three to two members. Her numbers did not entitle her to three, and it was a poor State.

General PINCKNEY seconds the motion.

Mr. KING. New Hampshire has probably more than 120,000 inhabitants, and has an extensive country of tolerable fertility. Its inhabitants may therefore be expected to increase fast. He remarked that the four Eastern States, having 800,000 souls, have one-third fewer representatives than the four Southern States, having not more than 700,000 souls, rating the blacks as five for three. The Eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their Southern brethren, but did not think it prudent to rely so far on that disposition, as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great and small States; but between the Southern and Eastern. For this reason he had been ready to yield something, in the proportion of representatives, for the security of the Southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giv-

ing them a still greater security, but did not see how it could be done.

General PINCKNEY. The Report before it was committed was more favorable to the Southern States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the General Government, they will be nothing more than overseers for the Northern States. He did not expect the Southern States to be raised to a majority of representatives; but wished them to have something like an equality. At present, by the alterations of the Committee in favor of the Northern States, they are removed further from it than they were before. One member indeed had been added to Virginia, which he was glad of, as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

Mr. WILLIAMSON was not for reducing New Hampshire from three to two, but for reducing some others. The Southern interest must be extremely endangered by the present arrangement. The Northern States are to have a majority in the first instance, and the means of perpetuating it.

Mr. DAYTON observed, that the line between Northern and Southern interest had been improperly drawn; that Pennsylvania was the dividing State, there being six on each side of her.

General PINCKNEY urged the reduction; dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the Government.

Mr. GOUVERNEUR MORRIS regretted the turn of the

debate. The States, he found, had many representatives on the floor. Few, he feared, were to be deemed the Representatives of America. He thought the Southern States have, by the Report, more than their share of representation. Property ought to have its weight, but not all the weight. If the Southern States are to supply money, the Northern States are to spill their blood. Besides, the probable revenue to be expected from the Southern States has been greatly overrated. He was against reducing New Hampshire.

Mr. RANDOLPH was opposed to a reduction of New Hampshire, not because she had a full title to three members; but because it was in his contemplation, first, to make it the duty, instead of leaving it to the discretion, of the Legislature to regulate the representation by a periodical census; secondly, to require more than a bare majority of votes in the Legislature, in certain cases, and particularly in commercial cases.

On the question for reducing New Hampshire from three to two Representatives, it passed in the negative,—North Carolina,* South Carolina, aye—2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia,* no—8.

General PINCKNEY and Mr. ALEXANDER MARTIN moved that six Representatives, instead of five, be allowed to North Carolina.

On the question it passed in the negative,—North Carolina, South Carolina, Georgia, aye—3; Massa-

* In the printed Journal, North Carolina, no; Georgia, aye.

chusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no—7.

General PINCKNEY and Mr. BUTLER made the same motion in favor of South Carolina.

On the question, it passed in the negative,—Delaware, North Carolina, South Carolina, Georgia, aye—4; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, no—7.

General PINCKNEY and Mr. HOUSTON moved that Georgia be allowed four instead of three Representatives; urging the unexampled celerity of its population.

On the question, it passed in the negative,—Virginia, North Carolina, South Carolina, Georgia, aye—4; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, no—7.

Mr. MADISON moved that the number allowed to each State be doubled. *A majority of a Quorum* of sixty-five members was too small a number to represent the whole inhabitants of the United States. They would not possess enough of the confidence of the people, and would be too sparsely taken from the people, to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with the future additions from the new States. The additional expense was too inconsiderable to be regarded in so important a case. And as far as the augmentation might be unpopular on that score, the objection was overbalanced by its effect on the hopes of a greater number of the popular candidates.

Mr. ELLSWORTH urged the objection of expense; and that the greater the number, the more slowly

would the business proceed; and the less probably be decided as it ought, at last. He thought the number of representatives too great in most of the State Legislatures; and that a large number was less necessary in the General Legislature, than in those of the States; as its business would relate to a few great national objects only.

Mr. SHERMAN would have preferred fifty to sixty-five. The great distance they will have to travel will render their attendance precarious, and will make it difficult to prevail on a sufficient number of fit men to undertake the service. He observed that the expected increase from new States also deserved consideration.

Mr. GERRY was for increasing the number beyond sixty-five. The larger the number, the less the danger of their being corrupted. The people are accustomed to, and fond of, a numerous representation; and will consider their rights as better secured by it. The danger of excess in the number may be guarded against by fixing a point within which the number shall always be kept.

Colonel MASON admitted, that the objection drawn from the consideration of expense had weight both in itself, and as the people might be affected by it. But he thought it outweighed by the objections against the smallness of the number. Thirty-eight will, he supposes, as being a majority of sixty-five, form a quorum. Twenty will be a majority of thirty-eight. This was certainly too small a number to make laws for America. They would neither bring with them all the necessary information relative to various local interests, nor possess the ne-

cessary confidence of the people. After doubling the number, the laws might still be made by so few as almost to be objectionable on that account.

Mr. READ was in favor of the motion. Two of the States (Delaware and Rhode Island) would have but a single member if the aggregate number should remain at sixty-five; and in case of accident to either of these, one State would have no Representative present to give explanations or informations of its interests or wishes. The people would not place their confidence in so small a number. He hoped the objects of the General Government would be much more numerous than seemed to be expected by some gentlemen, and that they would become more and more so. As to the new States, the highest number of Representatives for the whole might be limited, and all danger of excess thereby prevented. Mr. RUTLEDGE opposed the motion. The Representatives were too numerous in all the States. The full number allotted to the States may be expected to attend, and the lowest possible quorum should not therefore be considered. The interests of their constituents will urge their attendance too strongly for it to be omitted: and he supposed the General Legislature would not sit more than six or eight weeks in the year.

On the question for doubling the number, it passed in the negative,—Delaware, Virginia, aye—2; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia, no—9.

On the question for agreeing to the apportionment of Representatives, as amended by the last

Committee, it passed in the affirmative,—Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye—9; South Carolina, Georgia, no—2.

Mr. BROOME gave notice to the House, that he had concurred with a reserve to himself of an intention to claim for his State an equal voice in the second branch; which he thought could not be denied after this concession of the small States as to the first branch.

Mr. RANDOLPH moved, as an amendment to the Report of the Committee of five, "that in order to ascertain the alterations in the population and wealth of the several States, the Legislature should be required to cause a census and estimate to be taken within one year after its first meeting; and every —— years thereafter; and that the Legislature arrange the representation accordingly."

Mr. GOUVERNEUR MORRIS opposed it, as fettering the Legislature too much. Advantage may be taken of it in time of war or the apprehension of it, by new States to extort particular favors. If the mode was to be fixed for taking a census, it might certainly be extremely inconvenient: if unfixed, the Legislature may use such a mode as will defeat the object; and perpetuate the inequality. He was always against such shackles on the Legislature. They had been found very pernicious in most of the State Constitutions. He dwelt much on the danger of throwing such a preponderance into the western scale; suggesting that in time the western people would outnumber the Atlantic States. He wished therefore to put it in the power of the latter to

keep a majority of votes in their own hands. It was objected, he said, that, if the Legislature are left at liberty, they will never re-adjust the representation. He admitted that this was possible, but he did not think it probable, unless the reasons against a revision of it were very urgent; and in this case, it ought not to be done.

It was moved to postpone the proposition of Mr. RANDOLPH, in order to take up the following, viz.: "that the Committee of eleven, to whom was referred the Report of the Committee of five on the subject of Representation, be requested to furnish the Convention with the principles on which they grounded the Report;" which was disagreed to,—South Carolina alone voting in the affirmative.

Adjourned.

WEDNESDAY, JULY 11TH.

In Convention,—Mr. RANDOLPH's motion, requiring the Legislature to take a periodical census for the purpose of redressing inequalities in the representation was resumed.

Mr. SHERMAN was against shackling the Legislature too much. We ought to choose wise and good men, and then confide in them.

Mr. MASON. The greater the difficulty we find in fixing a proper rule of representation, the more unwilling ought we to be to throw the task from ourselves on the General Legislature. He did not object to the conjectural ratio which was to prevail in the outset; but considered a revision from

time to time, according to some permanent and precise standard, as essential to the fair representation required in the first branch. According to the present population of America, the northern part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter, when the reason no longer continued. From the nature of man, we may be sure that those who have power in their hands will not give it up, while they can retain it. On the contrary, we know that they will always, when they can, rather increase it. If the Southern States, therefore, should have three-fourths of the people of America within their limits, the Northern will hold fast the majority of Representatives. One-fourth will govern the three-fourths. The Southern States will complain, but they may complain from generation to generation without redress. Unless some principle, therefore, which will do justice to them hereafter, shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it in his State. Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States which are not yet in existence? If the Western States are to be admitted into the Union, as they arise, they must, he would repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride, and other passions, which we have; and will either not unite with, or will speedily revolt from, the Union, if they

are not in all respects placed on an equal footing with their brethren. It has been said, they will be poor, and unable to make equal contributions to the general treasury. He did not know but that, in time, they would be both more numerous and more wealthy, than their Atlantic brethren. The extent and fertility of their soil made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants, though not always a precise standard of wealth, was sufficiently so for every substantial purpose.

Mr. WILLIAMSON was for making it a duty of the Legislature to do what was right, and not leaving it at liberty to do or not to do it. He moved that Mr. RANDOLPH's propositions be postponed, in order to consider the following, "that in order to ascertain the alterations that may happen in the population and wealth of the several States, a census shall be taken of the free white inhabitants, and three-fifths of those of other descriptions on the first year after this government shall have been adopted, and every ——— year thereafter; and that the representation be regulated accordingly."

Mr. RANDOLPH agreed that Mr. WILLIAMSON's proposition should stand in place of his. He observed that the ratio fixed for the first meeting was a mere conjecture; that it placed the power in the hands of that part of America which could not always be entitled to it; that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation,

when justice might so require, by some constitutional provisions. If equality between great and small States be inadmissible, because in that case unequal numbers of constituents would be represented by equal numbers of votes, was it not equally inadmissible, that a larger and more populous district of America, should hereafter have less representation than a smaller and less populous district? If a fair representation of the people be not secured, the injustice of the Government will shake it to its foundations. What relates to suffrage, is justly stated by the celebrated Montesquieu as a fundamental article in Republican Governments. If the danger suggested by Mr. GOUVERNEUR MORRIS be real, of advantage being taken of the Legislature in pressing moments, it was an additional reason for tying their hands in such a manner, that they could not sacrifice their trust to momentary considerations. Congress have pledged the public faith to new States, that they shall be admitted on equal terms. They never would, nor ought to, accede on any other. The census must be taken under the direction of the General Legislature. The States will be too much interested, to take an impartial one for themselves.

Mr. BUTLER and General PINCKNEY insisted that blacks be included in the rule of representation *equally* with the whites; and for that purpose moved that the words "three-fifths" be struck out.

Mr. GERRY thought that three-fifths of them was, to say the least, the full proportion that could be admitted.

Mr. GORHAM. This ratio was fixed by Congress

as a rule of taxation. Then, it was urged, by the Delegates representing the States having slaves, that the blacks were still more inferior to freemen. At present, when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on the former occasion had convinced him, that three-fifths was pretty near the just proportion, and he should vote according to the same opinion now.

Mr. BUTLER insisted that the labor of a slave in South Carolina was as productive and valuable, as that of a freeman in Massachusetts; that as wealth was the great means of defence and utility to the nation, they were equally valuable to it with freemen; and that consequently an equal representation ought to be allowed for them in a government which was instituted principally, for the protection of property, and was itself to be supported by property.

Mr. MASON could not agree to the motion, notwithstanding it was favorable to Virginia, because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports and imports, and of course the revenue, would supply the means of feeding and supporting an army, and might in cases of emergency become themselves soldiers. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of representation. He could not, however, regard them as equal to freemen, and could not vote for them as such. He added, as worthy of remark, that the Southern States have this peculiar species of proper-

ty, over and above the other species of property common to all the States.

Mr. WILLIAMSON reminded Mr. GORHAM that if the Southern States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States, on the same occasion, contended for their equality. He did not, however, either then or now, concur in either extreme, but approved of the ratio of three-fifths.

On Mr. BUTLER's motion, for considering blacks as equal to whites in the apportionment of representation,—Delaware, South Carolina, Georgia, aye—3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no—7; New York, not on the floor.

Mr. GOUVERNEUR MORRIS said he had several objections to the proposition of Mr. WILLIAMSON. In the first place, it fettered the Legislature too much. In the second place, it would exclude some States altogether who would not have a sufficient number to entitle them to a single representation. In the third place, it will not consist with the resolution passed on Saturday last, authorizing the Legislature to adjust the representation from time to time on the principles of population and wealth; nor with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the said Resolution would not be pursued; if as wealth, then why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was, that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative num-

bers and wealth of different countries rendered all reasoning superfluous on the subject. Numbers might with greater propriety be deemed a measure of strength, than of wealth; yet the late defence made by Great Britain, against her numerous enemies proved, in the clearest manner, that it is entirely fallacious even in this respect.

Mr. KING thought there was great force in the objections of Mr. GOUVERNEUR MORRIS. He would, however, accede to the proposition for the sake of doing something.

Mr. RUTLEDGE contended for the admission of wealth in the estimate by which representation should be regulated. The Western States will not be able to contribute in proportion to their numbers; they should not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that, "at the end of — years after the first meeting of the Legislature, and of every — years thereafter, the Legislature shall proportion the representation according to the principles of wealth and population."

Mr. SHERMAN thought the number of people alone the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the Legislature; but he had been convinced by the observation of (Mr. RANDOLPH and Mr. MASON), that the *periods* and the *rule*, of revising the representation, ought to be fixed by the Constitution.

Mr. READ thought, the Legislature ought not to

be too much shackled. It would make the Constitution like religious creeds, embarrassing to those bound to conform to them, and more likely to produce dissatisfaction and schism, than harmony and union.

Mr. MASON objected to Mr. RUTLEDGE's motion, as requiring of the Legislature something too indefinite and impracticable, and leaving them a pretext for doing nothing.

Mr. WILSON had himself no objection to leaving the Legislature entirely at liberty, but considered wealth as an impracticable rule.

Mr. GORHAM. If the Convention, who are comparatively so little biassed by local views, are so much perplexed, how can it be expected that the Legislature hereafter, under the full bias of those views will be able to settle a standard? He was convinced, by the arguments of others and his own reflections, that the Convention ought to fix some standard or other.

Mr. GOUVERNEUR MORRIS. The argument of others and his own reflections had led him to a very different conclusion. If we cannot agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come? Surely those who come after us will judge better of things present, than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of (Mr. MASON) relative to the Western country had not changed his opinion on that head. Among other objections, it must be apparent, they would not be able to furnish men equally enlightened, to share in the admin-

istration of our common interests. The busy haunts of men, not the remote wilderness, was the proper school of political talents. If the western people get the power into their hands, they will ruin the Atlantic interests. The back members are always most averse to the best measures. He mentioned the case of Pennsylvania formerly. The lower part of the State had the power in the first instance. They kept it in their own hands, and the country was the better for it. Another objection with him, against admitting the blacks into the census, was, that the people of Pennsylvania would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised against leaving the adjustment of the representation, from time to time, to the discretion of the Legislature. The first was, they would be unwilling to revise it at all. The second, that, by referring to *wealth*, they would be bound by a rule which, if willing, they would be unable to execute. The first objection distrusts their fidelity. But if their duty, their honor, and their oaths, will not bind them, let us not put into their hands our liberty, and all our other great interests; let us have no government at all. In the second place, if these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the Committee in the apportionment of Representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the representatives of the people.

Mr. MADISON was not a little surprised to hear this

implicit confidence urged by a member who, on all occasions, had inculcated so strongly the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest. If the representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the Northern majority, he was still more zealous in exhorting all to a jealousy of a western majority. To reconcile the gentleman with himself, it must be imagined that he determined the human character by the points of the compass. The truth was, that all men having power ought to be distrusted, to a certain degree. The case of Pennsylvania had been mentioned, where it was admitted that those who were possessed of the power in the original settlement never admitted the new settlements to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs—of the minority—who had opposed and defeated every reform which had been attempted. Virginia was, in a less degree, another example. With regard to the Western States, he was clear and firm in opinion, that no unfavorable distinctions were admissible, either in point of justice or policy. He thought also, that the hope of contributions to the Treasury from them had been much underrated. Future contributions, it seemed to be understood on all hands, would be principally levied on imports

and exports. The extent and fertility of the Western soil would for a long time give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it, that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississippi should be opened to them, which would of necessity be the case as soon as their population would subject them to any considerable share of the public burden, imposts on their trade could be collected with less expense, and greater certainty, than on that of the Atlantic States. In the mean time, as their supplies must pass through the *Atlantic States*, their contributions would be levied in the same manner with those of the Atlantic States. He could not agree that any substantial objection lay against fixing numbers for the perpetual standard of representation. It was said, that representation and taxation were to go together; that taxation and wealth ought to go together; that population and wealth were not measures of each other. He admitted that in different climates, under different forms of government, and in different stages of civilization, the inference was perfectly just. He would admit that in no situation numbers of inhabitants were an accurate measure of wealth. He contended, however, that in the United States it was sufficiently so for the object in contemplation. Although their climate varied considerably, yet as the governments, the laws, and the manners of all, were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labor, would constantly tend to

equalize themselves. The value of labor might be considered as the principal criterion of wealth and ability to support taxes; and this would find its level in different places, where the intercourse should be easy and free, with as much certainty as the value of money or any other thing. Wherever labor would yield most, people would resort; till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more, to the less, populous places—from Europe to America—from the Northern and middle parts of the United States to the Southern and Western. They go where land is cheaper, because there labor is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value than on the Delaware, it is also true that the same labor will raise twice or thrice the quantity in the former, that it will raise in the latter, situation.

Colonel MASON agreed with Mr. G. MORRIS, that we ought to leave the interests of the people to the representatives of the people; but the objection was, that the Legislature would cease to be the representatives of the people. It would continue so no longer than the States now containing a majority of the people should retain that majority. As soon as the southern and western population should predominate, which must happen in a few years, the power would be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution.

On the question for postponing Mr. WILLIAMSON'S motion, in order to consider that of Mr. RUTLEDGE, it passed in the negative,—Massachusetts, Pennsyl-

vania, Delaware, South Carolina, Georgia, aye—5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, no—5.

On the question on the first clause of Mr. WILLIAMSON'S motion, as to taking a census of the *free* inhabitants, it passed in the affirmative,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, aye—6; Delaware, Maryland, South Carolina, Georgia, no—4.

The next clause as to three-fifths of the negroes being considered,—

Mr. KING, being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with whites at all, would excite great discontents among the States having no slaves. He had never said, as to any particular point, that he would in no event acquiesce in and support it; but he would say that if in any case such a declaration was to be made by him, it would be in this. He remarked that in the temporary allotment of representatives made by the Committee, the Southern States had received more than the number of their white and three-fifths of their black inhabitants entitled them to.

Mr. SHERMAN. South Carolina had not more beyond her proportion than New York and New Hampshire; nor either of them more than was necessary in order to avoid fractions, or reducing them below their proportion. Georgia had more; but the rapid growth of that State seemed to justify it. In general the allotment might not be just, but considering all circumstances he was satisfied with it.

Mr. GORHAM supported the propriety of establishing numbers as the rule. He said that in Massachusetts estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of people; and it had been found, even including Boston, that the most exact proportion prevailed between numbers and property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the people of the Eastern States. But he recollected that when the proposition of Congress for changing the eighth Article of the Confederation was before the Legislature of Massachusetts, the only difficulty then was, to satisfy them that the negroes ought not to have been counted equally with the whites, instead of being counted in the ratio of three-fifths only.*

Mr. WILSON did not well see, on what principle the admission of blacks in the proportion of three-fifths could be explained. Are they admitted as citizens—then why are they not admitted on an equality with white citizens? Are they admitted as property—then why is not other property admitted into the computation? These were difficulties, however, which he thought must be overruled by the necessity of compromise. He had some apprehensions also, from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pennsylvania, as had been intimated by

* They were then to have been a rule of taxation only.

his colleague (Mr. GOUVERNEUR MORRIS). But he differed from him in thinking numbers of inhabitants so incorrect a measure of wealth. He had seen the western settlements of Pennsylvania, and on a comparison of them with the city of Philadelphia could discover little other difference, than that property was more unequally divided here than there. Taking the same number in the aggregate, in the two situations, he believed there would be little difference in their wealth and ability to contribute to the public wants.

Mr. GOUVERNEUR MORRIS was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States, or to human nature; and he must therefore do it to the former. For he could never agree to give such encouragement to the slave trade, as would be given by allowing them a representation for their negroes; and he did not believe those States would ever confederate on terms that would deprive them of that trade.

On the question for agreeing to include three-fifths of the blacks, —Connecticut, Virginia, North Carolina, Georgia, aye—4; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland,* South Carolina, no—6.

On the question as to taking the census "the first year after the meeting of the Legislature,"—Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, aye—7; Connecticut, Maryland, Georgia, no—3.

* Mr. Carroll said, in explanation of the vote of Maryland, that he wished the *phraseology* to be so altered as to obviate, if possible, the danger which had been expressed of giving umbrage to the Eastern and Middle States.

On filling the blank for the periodical census with fifteen years,—agreed to, *nem. con.*

Mr. MADISON moved to add, after “fifteen years,” the words “at least,” that the Legislature might anticipate when circumstances were likely to render a particular year inconvenient.

On this motion, for adding “at least,” it passed in the negative, the States being equally divided,—Massachusetts, Virginia, North Carolina, South Carolina, Georgia, aye—5; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, no—5.

A change in the phraseology of the other clause, so as to read, “and the Legislature shall alter or augment the representation accordingly,” was agreed to, *nem. con.*

On the question on the whole resolution of Mr. WILLIAMSON, as amended,—Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—9; so it was rejected unanimously.

Adjourned.

THURSDAY, JULY 12TH.

In Convention,—Mr. GOUVERNEUR MORRIS moved to add to the clause empowering the Legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso, “that taxation shall be in proportion to representation.”

Mr. BUTLER contended again, that representation should be according to the full number of inhabit-

ants, including all the blacks; admitting the justice of Mr. GOUVERNEUR MORRIS's motion.

Mr. MASON also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the Legislature by it. It might drive the Legislature to the plan of requisitions.

Mr. GOUVERNEUR MORRIS admitted that some objections lay against his motion, but supposed they would be removed by restraining the rule to *direct* taxation. With regard to indirect taxes on *exports* and imports, and on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary, he was persuaded that the imports and consumption were pretty nearly equal throughout the Union.

General PINCKNEY liked the idea. He thought it so just that it could not be objected to; but foresaw, that, if the revision of the census was left to the discretion of the Legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced, by the Constitution. He was alarmed at what was said* yesterday, concerning the negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. South Carolina has in one year exported to the amount of £600,000 sterling, all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the Legislature from taxing exports.

* By Mr. GOUVERNEUR MORRIS.

Mr. WILSON approved the principle, but could not see how it could be carried into execution; unless restrained to direct taxation.

Mr. GOUVERNEUR MORRIS having so varied his motion by inserting the word "direct," it passed, *nem. con.*, as follows: "provided always that direct taxation ought to be proportioned to representation."

Mr. DAVIE said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three-fifths. If the Eastern States meant, therefore, to exclude them altogether, the business was at an end.

Doctor JOHNSON thought that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one, population being the best measure of wealth. He concluded, therefore, that the number of people ought to be established as the rule, and that all descriptions, including blacks *equally* with the whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a committee might be appointed to take them into consideration, and report them.

Mr. GOUVERNEUR MORRIS. It had been said that it is high time to speak out. As one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the States. He hoped, and believed, that all would enter into such a compact. If they

would not, he was ready to join with any States that would. But as the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern States will never agree to. It is equally vain for the latter to require, what the other States can never admit; and he verily believed the people of Pennsylvania will never agree to a representation of negroes. What can be desired by these States more than has been already proposed—that the Legislature shall from time to time regulate representation according to population and wealth?

General PINCKNEY desired that the rule of wealth should be ascertained, and not left to the pleasure of the Legislature; and that property in slaves should not be exposed to danger, under a government instituted for the protection of property.

The first clause in the Report of the first Grand Committee was postponed.

Mr. ELLSWORTH, in order to carry into effect the principle established, moved to add to the last clause adopted by the House the words following, “and that the rule of contribution by direct taxation, for the support of the Government of the United States, shall be the number of white inhabitants, and three-fifths of every other description in the several States, until some other rule that shall more accurately ascertain the wealth of the several States, can be devised and adopted by the Legislature.”

Mr. BUTLER seconded the motion, in order that it might be committed.

Mr. RANDOLPH was not satisfied with the motion. The danger will be revived, that the ingenuity of

the Legislature may evade or pervert the rule, so as to perpetuate the power where it shall be lodged in the first instance. He proposed, in lieu of Mr. ELLSWORTH'S motion, "that in order to ascertain the alterations in representation that may be required, from time to time, by changes in the relative circumstances of the States, a census shall be taken within two years from the first meeting of the General Legislature of the United States, and once within the term of every — years afterwards, of all the inhabitants, in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783, (rating the blacks at three-fifths of their number); and that the Legislature of the United States shall arrange the representation accordingly." He urged strenuously that express security ought to be provided for including slaves in the ratio of representation. He lamented that such a species of property existed. But as it did exist, the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the Legislature therefore ought not to be left at liberty.

Mr. ELLSWORTH withdraws his motion, and seconds that of Mr. RANDOLPH.

Mr. WILSON observed, that less umbrage would perhaps be taken against an admission of the slaves into the rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally at-

tained. He accordingly moved, and was seconded, so to alter the last clause adopted by the House, that, together with the amendment proposed, the whole should read as follows: "provided always that the representation ought to be proportioned according to direct taxation; and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the relative circumstances of the States, *Resolved*, that a census be taken within two years from the first meeting of the Legislature of the United States, and once within the term of every — years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783; and that the Legislature of the United States shall proportion the direct taxation accordingly."

Mr. KING. Although this amendment varies the aspect somewhat, he had still two powerful objections against tying down the Legislature to the rule of numbers,—first, they were at this time an uncertain index of the relative wealth of the States; secondly, if they were a just index at this time, it cannot be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the Republic. If justice was not the basis of the connection, it could not be of long duration. He must be short-sighted indeed who does not foresee, that, whenever the Southern States shall be more numerous than the Northern, they can and will hold a language that will awe them into justice. If they threaten to separate now in case

injury shall be done them, will their threats be less urgent or effectual when force shall back their demands. Even in the intervening period, there will be no point of time at which they will not be able to say, do us justice or we will separate. He urged the necessity of placing confidence to a certain degree in every government, and did not conceive that the proposed confidence, as to a periodical re-adjustment of the representation, exceeded that degree.

Mr. PINCKNEY moved to amend Mr. RANDOLPH's motion, so as to make "blacks equal to the whites in the ratio of representation." This he urged was nothing more than justice. The blacks are the laborers, the peasants, of the Southern States. They are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and, considering money as the sinew of war, to the strength, of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with representation.

General PINCKNEY moves to insert six years instead of two, as the period, computing from the first meeting of the Legislature, within which the first census should be taken. On this question for inserting six years, instead of "two," in the proposition of Mr. WILSON, it passed in the affirmative,—Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, aye—5; Massachusetts, Virginia, North Carolina, Georgia, no—4; Delaware, divided.

On the question for filling the blank for the periodical census with twenty years, it passed in the negative,—Connecticut, New Jersey, Pennsylvania, aye—3; Massachusetts, Delaware, Maryland, Vir-

ginia, North Carolina, South Carolina, Georgia, no—7.

On the question for ten years, it passed in the affirmative,—Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—8; Connecticut, New Jersey, no—2.

On Mr. PINCKNEY'S motion, for rating blacks as equal to whites, instead of as three-fifths,—South Carolina, Georgia, aye—2; Massachusetts, Connecticut (Doctor JOHNSON, aye), New Jersey, Pennsylvania (three against two), Delaware, Maryland, Virginia, North Carolina, no—8.

Mr. RANDOLPH'S proposition, as varied by Mr. WILSON, being read for taking the question on the whole,—

Mr. GERRY urged that the principle of it could not be carried into execution, as the States were not to be taxed as States. With regard to taxes on imposts, he conceived they would be more productive where there were no slaves, than where there were; the consumption being greater.

Mr. ELLSWORTH. In case of a poll-tax there would be no difficulty. But there would probably be none. The sum allotted to a State may be levied without difficulty, according to the plan used by the State in raising its own supplies.

On the question on the whole proposition, as proportioning representation to direct taxation, and both to the white and three-fifths of the black inhabitants, and requiring a census within six years, and within every ten years afterwards,—Connecticut, Pennsylvania, Maryland, Virginia, North Carolina,

Georgia, aye—6; New Jersey, Delaware, no—2; Massachusetts, South Carolina, divided.

Adjourned.

FRIDAY, JULY 13TH.

In Convention,—It being moved to postpone the clause in the Report of the Committee of Eleven as to the originating of money bills in the *first* branch, in order to take up the following, "that in the second branch each State shall have an equal voice,"—

Mr. GERRY moved to add, as an amendment to the last clause agreed to by the house," that from the first meeting of the Legislature of the United States till a census shall be taken, all moneys to be raised for supplying the public Treasury by direct taxation shall be assessed on the inhabitants of the several States according to the number of their Representatives respectively in the first branch." He said this would be as just before as after the census, according to the general principle that taxation and representation ought to go together.

Mr. WILLIAMSON feared that New Hampshire will have reason to complain. Three members were allotted to her as a liberal allowance, for this reason among others, that she might not suppose any advantage to have been taken of her absence. As she was still absent, and had no opportunity of deciding whether she would choose to retain the number on the condition of her being taxed in proportion

to it, he thought the number ought to be reduced from three to two, before the question was taken on Mr. GERRY's motion.

Mr. READ could not approve of the proposition. He had observed, he said, in the Committee a backwardness in some of the members from the large States, to take their full proportion of Representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just and accurate adjustment of representation and taxation to each other.

Mr. GOUVERNEUR MORRIS and Mr. MADISON answered, that the charge itself involved an acquittal ; since, notwithstanding the augmentation of the number of members allotted to Massachusetts and Virginia, the motion for proportioning the burdens thereto was made by a member from the former State, and was approved by Mr. MADISON, from the latter, who was on the Committee. Mr. GOUVERNEUR MORRIS said, that he thought Pennsylvania had her due share in eight members ; and he could not in candour ask for more. Mr. MADISON said, that having always conceived that the difference of interest in the United States lay not between the large and small, but the Northern and Southern States, and finding that the number of members allotted to the Northern States was greatly superior, he should have preferred an addition of two members to the Southern States, to wit, one to North and one to South Carolina, rather than of one member to Virginia. He liked the present motion, because it tended to moderate the views both of the opponents and advocates for rating very high the negroes.

Mr. ELLSWORTH hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions cannot be regarded in apportioning the number of Representatives, the rule will be unjust, until an actual census shall be made. After that, taxation may be precisely proportioned, according to the principle established, to the *number of inhabitants*.

Mr. WILSON hoped the motion would not be withdrawn. If it should, it will be made from another quarter. The rule will be as reasonable and just before, as after, a census. As to fractional numbers, the census will not destroy, but ascertain them. And they will have the same effect after, as before, the census; for, as he understands the rule, it is to be adjusted not to the number of *inhabitants*, but of *Representatives*.

Mr. SHERMAN opposed the motion. He thought the Legislature ought to be left at liberty; in which case they would probably conform to the principles observed by Congress.

Mr. MASON did not know that Virginia would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the census would be as just as it would be rendered by an actual census.

Mr. ELLSWORTH and Mr. SHERMAN moved to postpone the motion of Mr. GERRY.

On the question, it passed in the negative,—Connecticut, New Jersey, Delaware, Maryland, aye—4;

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—6.

On the question on Mr. GERRY's motion, it passed in the negative, the States being equally divided,—Massachusetts, *Pennsylvania*, North Carolina, South Carolina, Georgia, aye—5; Connecticut, New Jersey, Delaware, Maryland, *Virginia*, no—5.

Mr. GERRY finding that the loss of the question had proceeded from an objection, with some, to the proposed assessment of direct taxes on the *inhabitants* of the States, which might restrain the Legislature to a poll-tax, moved his proposition again, but so varied as to authorize the assessment on the *States*, which leaves the mode to the Legislature, viz: "that from the first meeting of the Legislature of the United States, until a census shall be taken, all moneys for supplying the public Treasury by direct taxation shall be raised from the said several States, according to the number of their Representatives respectively in the first branch."

On this varied question, it passed in the affirmative,—Massachusetts, *Virginia*, North Carolina, South Carolina, Georgia, aye—5; Connecticut, New Jersey, Delaware, Maryland, no—4; *Pennsylvania*, divided.

On the motion of Mr. RANDOLPH, the vote of Monday last, authorizing the Legislature to adjust, from time to time, the representation upon the principles of *wealth* and numbers of inhabitants, was reconsidered by common consent, in order to strike out *wealth* and adjust the resolution to that requiring periodical revisions according to the number of whites and three-fifths of the blacks. The motion was in

the words following:—"But as the present situation of the States may probably alter in the number of their inhabitants, that the Legislature of the United States be authorized, from time to time, to apportion the number of Representatives; and in case any of the States shall hereafter be divided, or any two or more States united, or new States created within the limits of the United States, the Legislature of the United States shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned."

Mr. GOUVERNEUR MORRIS opposed the alteration, as leaving still an incoherence. If negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhabitants, they ought to be added in their entire number, and not in the proportion of three-fifths. If as property, the word wealth was right; and striking it out would produce the very inconsistency which it was meant to get rid of. The train of business, and the late turn which it had taken, had led him, he said, into deep meditation on it, and he would candidly state the result. A distinction had been set up, and urged, between the Northern and Southern States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the Southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequence of such a transfer of power from the maritime to the interior and landed

interest, will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defence for the Northern States against it. But to come more to the point, either this distinction is fictitious or real; if fictitious, let it be dismissed, and let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security, if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the Southern States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the Middle States, in point of policy, to take? To join their Eastern brethren, according to his ideas. If the Southern States get the power into their hands, and be joined, as they will be, with the interior country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior country, having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northern and Middle States will have against this danger. It has been said that North Carolina, South Carolina, and Georgia only, will in a little time have a majority of the people of America. They must in that case include the great interior country, and every thing was to be apprehended from their getting the power into their hands.

Mr. BUTLER. The security the Southern States

want is, that their negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do. It was not supposed that North Carolina, South Carolina and Georgia would have more people than all the other States, but many more relatively to the other States, than they now have. The people and strength of America are evidently bearing southwardly, and south westwardly.

Mr. WILSON. If a general declaration would satisfy any gentleman, he had no indisposition to declare his sentiments. Conceiving that all men, wherever placed, have equal rights, and are equally entitled to confidence, he viewed without apprehension the period when a few States should contain the superior number of people. The majority of people, wherever found, ought in all questions, to govern the minority. If the interior country should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no. This jealousy misled the policy of Great Britain with regard to America. The fatal maxims espoused by her were, that the Colonies were growing too fast, and that their growth must be stinted in time. What were the consequences? First, enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy and policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out? No one has yet ventured to attempt it. Congress have never been able to discover a better. No State, as far as he had heard, had suggested any other. In 1783, after elaborate

discussion of a measure of wealth, all were satisfied then, as they now are, that the rule of numbers does not differ much from the combined rule of numbers and wealth. Again, he could not agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other *personal* rights, numbers were surely the natural and precise measure of representation. And with respect to property, they could not vary much from the precise measure. In no point of view, however, could the establishment of numbers, as the rule of representation in the first branch, vary his opinion as to the impropriety of letting a vicious principle into the second branch.

On the question to strike out *wealth*, and to make the change as moved by Mr. RANDOLPH, it passed in the affirmative,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; Delaware, divided.

Mr. READ moved to insert, after the word “divided,” “or enlarged by addition of territory;” which was agreed to, *nem. con.**

Adjourned.

SATURDAY, JULY 14TH.

In Convention,—Mr. L. MARTIN called for the question on the whole Report, including the parts

* His object probably was to provide for such cases as an enlargement of Delaware by annexing to it the peninsula on the East side of the Chesapeake.

relating to the origination of money bills, and the equality of votes in the second branch.

Mr. GERRY wished, before the question should be put, that the attention of the House might be turned to the dangers apprehended from Western States. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will, if they acquire power, like all men, abuse it. They will oppress commerce, and drain our wealth into the Western country. To guard against these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner that they should never be able to outnumber the Atlantic States. He accordingly moved, "that in order to secure the liberties of the States already confederated, the number of Representatives in the first branch, of the States which shall hereafter be established, shall never exceed in number, the Representatives from such of the States as shall accede to this Confederation."

Mr. KING seconded the motion.

Mr. SHERMAN thought there was no probability that the number of future States would exceed that of the existing States. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides, we are providing for our posterity, for our children and our grand children, who would be as likely to be citizens of new western States, as of the old States. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Mr. GERRY. If some of our children should remove, others will stay behind, and he thought in-

cumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the western country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides, foreigners are resorting to that country, and it is uncertain what turn things may take there.

On the question for agreeing to the motion of Mr. GERRY, it passed in the negative,—Massachusetts, Connecticut, Delaware, Maryland, aye—4; New Jersey, Virginia, North Carolina, South Carolina, Georgia, no—5; Pennsylvania, divided.

Mr. RUTLEDGE proposed to reconsider the two propositions touching the originating of money bills, in the first, and the equality of votes in the second, branch.

Mr. SHERMAN was for the question on the whole at once. It was, he said, a conciliatory plan; it had been considered in all its parts; a great deal of time had been spent upon it; and if any part should now be altered, it would be necessary to go over the whole ground again.

Mr. L. MARTIN urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the first branch. He was willing, however, to make trial of the plan, rather than do nothing.

Mr. WILSON traced the progress of the report through its several stages; remarking, that when on the question concerning an equality of votes the House was divided, our constituents, had they voted as their Representatives did, would have stood as two-thirds against the equality, and one-third only

in favor of it. This fact would ere long be known, and it would appear that this fundamental point has been carried by one-third against two-thirds. What hopes will our constituents entertain when they find that the essential principles of justice have been violated in the outset of the Government? As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses would be reconsidered. The equality of votes was a point of such critical importance, that every opportunity ought to be allowed for discussing and collecting the mind of the Convention upon it.

Mr. L. MARTIN denies that there were two-thirds against the equality of votes. The States that please to call themselves large, are the weakest in the Union. Look at Massachusetts—look at Virginia—are they efficient States? He was for letting a separation take place, if they desired it. He had rather there should be two confederacies, than one founded on any other principle than an equality of votes in the second branch at least.

Mr. WILSON was not surprised that those who say that a minority does more than a majority, should say the minority is stronger than the majority. He supposed the next assertion will be, that they are richer also; though he hardly expected it would be persisted in, when the States shall be called on for taxes and troops.

Mr. GERRY also animadverted on Mr. L. MARTIN's remarks on the weakness of Massachusetts. He favored the reconsideration, with a view, not of de-
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stroying the equality of votes, but of providing that the States should vote *per capita*, which, he said, would prevent the delays and inconveniences that had been experienced in Congress, and would give a national aspect and spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the corner stone of the accommodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members? The Report was not altogether to his mind; but he would agree to it as it stood, rather than throw it out altogether.

The reconsideration being tacitly agreed to,—

Mr. PINCKNEY moved, that, instead of an equality of votes, the States should be represented in the second branch as follows: New Hampshire by two members; Massachusetts, four; Rhode Island, one; Connecticut, three; New York, three; New Jersey, two; Pennsylvania, four; Delaware, one; Maryland, three; Virginia, five; North Carolina, three; South Carolina, three; Georgia, two; making in the whole, thirty-six.

Mr. WILSON seconds the motion.

Mr. DAYTON. The smaller States can never give up their equality. For himself, he would in no event yield that security for their rights.

Mr. SHERMAN urged the equality of votes, not so much as a security for the small States, as for the State Governments, which could not be preserved unless they were represented, and had a negative in the General Government. He had no objection to

the members in the second branch voting *per capita*, as had been suggested by (Mr. GERRY).

Mr. MADISON concurred in this motion of Mr. PINCKNEY, as a reasonable compromise.

Mr. GERRY said, he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent from what had been seen, that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other States to accede or not accede, as had been intimated.

Mr. KING said, it was always with regret that he differed from his colleagues, but it was his duty to differ from (Mr. GERRY) on this occasion. He considered the proposed Government as substantially and formally a General and National Government over the people of America. There never will be a case in which it will act as a Federal Government, on the States and not on the individual citizens. And is it not a clear principle, that in a free government, those who are to be the objects of a government, ought to influence the operations of it? What reason can be assigned, why the same rule of representation should not prevail in the second, as in the first, branch? He could conceive none. On the contrary, every view of the subject that presented itself seemed to require it. Two objections had been raised against it, drawn, first, from the terms of the existing compact; secondly, from a supposed danger to the smaller States. As to the first objection, he thought it inapplicable. According to the existing Confederation, the rule by which the public burdens is to be apportioned is *fixed*, and must be

pursued. In the proposed Government, it cannot be fixed, because indirect taxation is to be substituted. The Legislature, therefore, will have full discretion to impose taxes in such modes and proportions as they may judge expedient. As to the second objection, he thought it of as little weight. The General Government can never wish to intrude on the State Governments. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the State debts into the Federal debt, making one aggregate debt of about \$70,000,000, and leaving it to be discharged by the General Government. According to the idea of securing the State Governments, there ought to be three distinct legislative branches. The second was admitted to be necessary, and was actually meant, to check the first branch, to give more wisdom, system and stability to the Government; and ought clearly, as it was to operate on the people, to be proportioned to them. For the third purpose of securing the States, there ought then to be a third branch, representing the States as such, and guarding, by equal votes, their rights and dignities. He would not pretend to be as thoroughly acquainted with his immediate constituents as his colleagues, but it was his firm belief that Massachusetts would never be prevailed on to yield to an equality of votes. In New York, (he was sorry to be obliged to say any thing relative to that State in the absence of its representatives, but the occasion required it), in New York he had seen that the most powerful argument used by the considerate

opponents to the grant of the Impost to Congress, was pointed against the vicious constitution of Congress with regard to representation and suffrage. He was sure that no government would last that was not founded on just principles. He preferred the doing of nothing, to an allowance of an equal vote to all the States. It would be better, he thought, to submit to a little more confusion and convulsion, than to submit to such an evil. It was difficult to say what the views of different gentlemen might be. Perhaps there might be some who thought no Government co-extensive with the United States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid, that gentlemen should speak out, that we might understand one another.

Mr. STRONG. The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A committee had been appointed; and though some of the members of it were averse to an equality of votes, a report had been made in favor of it. It is agreed, on all hands, that Congress are nearly at an end. If no accommodation takes place, the Union itself must soon be dissolved. It has been suggested that if we cannot come to any general agreement, the principal States may form and recommend a scheme of government. But will the small States, in that case, ever accede to it? Is it probable that the large States themselves will, under such circumstances, embrace and ratify it? He thought the

small States had made a considerable concession, in the article of money bills, and that they might naturally expect some concessions on the other side. From this view of the matter, he was compelled to give his vote for the Report taken altogether.

Mr. MADISON expressed his apprehensions that if the proper foundation of government was destroyed, by substituting an equality in place of a proportional representation, no proper superstructure would be raised. If the small States really wish for a government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members as well as themselves, he could not help thinking them extremely mistaken in the means. He reminded them of the consequences of laying the *existing Confederation* on improper principles. All the principal parties to its compilation joined immediately in mutilating and fettering the Government, in such a manner that it has disappointed every hope placed on it. He appealed to the doctrine and arguments used by themselves, on a former occasion. It had been very properly observed (by Mr. PATTERSON), that representation was an expedient by which the meeting of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents, if convened, would respectively have. Was not this remark as applicable to one branch of the representation as to the other? But it had been said that the Government would, in its operation, be partly federal, partly national; that although in the latter respect the representatives of the people ought to be in propor-

tion to the people, yet in the former, it ought to be according to the number of States. If there was any solidity in this distinction, he was ready to abide by it; if there was none, it ought to be abandoned. In all cases where the General Government is to act on the people, let the people be represented, and the votes be proportional. In all cases where the Government is to act on the States as such, in like manner as Congress now acts on them, let the States be represented and the votes be equal. This was the true ground of compromise, if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the General Government was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the States as political bodies, had been exploded on all hands. He observed that the people of the large States would, in some way or other, secure to themselves a weight proportioned to the importance accruing from their superior numbers. If they could not effect it by a proportional representation in the Government, they would probably accede to no government which did not, in a great measure, depend for its efficacy on their voluntary co-operation; in which case they would indirectly secure their object. The existing Confederacy proved that where the acts of the General Government were to be executed by the particular Governments, the latter had a weight in proportion to their importance. No one would say, that, either in Congress or out of Congress, Delaware had equal weight with Pennsylvania. If the latter was to supply ten times as much money as

the former, and no compulsion could be used, it was of ten times more importance, that she should voluntarily furnish the supply. In the Dutch Confederacy the votes of the provinces were equal. But Holland, which supplies about half the money, governed the whole Republic. He enumerated the objections against an equality of votes in the second branch, notwithstanding the proportional representation in the first. 1. The minority could negative the will of the majority of the people. 2. They could extort measures, by making them a condition of their assent to other necessary measures. 3. They could obtrude measures on the majority, by virtue of the peculiar powers which would be vested in the Senate. 4. The evil, instead of being cured by time, would increase with every new State that should be admitted, as they must all be admitted on the principle of equality. 5. The perpetuity it would give to the preponderance of the Northern against the Southern scale, was a serious consideration. It seemed now to be pretty well understood, that the real difference of interests lay, not between the large and small, but between the Northern and Southern, States. The institution of slavery, and its consequences, formed the line of discrimination. There were five States on the Southern, eight on the Northern side of this line. Should a proportional representation take place, it was true, the Northern would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

Mr. WILSON would add a few words only. If equality in the second branch was an error that

time would correct, he should be less anxious to exclude it, being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the representation, like an error in the first concoction, must be followed by disease, convulsions, and finally death itself. The justice of the general principle of proportional representation has not, in argument at least, been yet contradicted. But it is said that a departure from it, so far as to give the States an equal vote in one branch of the Legislature, is essential to their preservation. He had considered this position maturely, but could not see its application. That the States ought to be preserved, he admitted. But does it follow, that an equality of votes is necessary for the purpose? Is there any reason to suppose that, if their preservation should depend more on the large than on the small States, the security of the States, against the general government, would be diminished? Are the large States less attached to their existence, more likely to commit suicide, than the small? An equal vote, then, is not necessary, as far as he can conceive, and is liable, among other objections, to this insuperable one,—the great fault of the existing Confederacy is its inactivity. It has never been a complaint against Congress, that they governed over much. The complaint has been, that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes, as is proposed? No: this very equality carries us directly to Congress,—to the system which it is our duty to rectify. The small

States cannot indeed act, by virtue of this equality, but they may control the government, as they have done in Congress. This very measure is here prosecuted by a minority of the people of America. Is then, the object of the Convention likely to be accomplished in this way? Will not our constituents say, we sent you to form an efficient government, and you have given us one, more complex, indeed, but having all the weakness of the former government. He was anxious for uniting all the States under one government. He knew there were some respectable men who preferred three Confederacies, united by offensive and defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not, however, concur in it himself; but he thought nothing so pernicious as bad first principles.

Mr. ELLSWORTH asked two questions,—one of Mr. WILSON, whether he had ever seen a good measure fail in Congress for want of a majority of States in its favor? He had himself never known such an instance. The other of Mr. MADISON, whether a negative lodged with the majority of the States, even the smallest, could be more dangerous than the qualified negative proposed to be lodged in a single Executive Magistrate, who must be taken from some one State?

Mr. SHERMAN signified that his expectation was that the General Legislature would in some cases act on the *federal principle*, of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the States should fail to supply their respective quotas.

On the question for agreeing to Mr. PINCKNEY's motion, for allowing New Hampshire two; Massachusetts, four, &c. it passed in the negative,—Pennsylvania, Maryland, Virginia, South Carolina, aye—4; Massachusetts, (Mr. KING, aye, Mr. GORHAM absent), Connecticut, New Jersey, Delaware, North Carolina, Georgia, no—6.

Adjourned.

MONDAY, JULY 16TH.

In Convention,—On the question for agreeing to the whole Report, as amended, and including the equality of votes in the second branch, it passed in the affirmative,—Connecticut, New Jersey, Delaware, Maryland, North Carolina, (Mr. SPAIGHT no) aye—5; Pennsylvania, Virginia, South Carolina, Georgia, no—4; Massachusetts, divided (Mr. GERRY, Mr. STRONG, aye; Mr. KING, Mr. GORHAM, no).

The whole thus passed is in the words following, viz.

“*Resolved*, that in the original formation of the Legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number New Hampshire shall send, 3; Massachusetts, 8; Rhode Island, 1; Connecticut 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3. But as the present situation of the States may probably alter in the number of their inhabitants, the Legislature of the United States shall be authorized, from time to time, to

apportion the number of Representatives, and in case any of the States shall hereafter be divided, or enlarged by addition of territory, or any two or more States united, or any new States created within the limits of the United States, the Legislature of the United States shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned: provided always, that representation ought to be proportioned according to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time by the changes in the relative circumstances of the States—

“*Resolved*, that a census be taken within six years from the first meeting of the Legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their Resolution of the eighteenth day of April, 1783; and that the Legislature of the United States shall proportion the direct taxation accordingly.

“*Resolved*, that all bills for raising or appropriating money, and for fixing the salaries of officers of the Government of the United States, shall originate in the first branch of the Legislature of the United States; and shall not be altered or amended in the second branch; and that no money shall be drawn from the public Treasury, but in pursuance of appropriations to be originated in the first branch.

“Resolved, that in the second branch of the Legislature of the United States, each State shall have an equal vote.”

The sixth Resolution in the Report from the Committee of the Whole House, which had been postponed, in order to consider the seventh and eighth Resolutions, was now resumed, (see the Resolution.)

“That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation,” was agreed to, *nem. con.*

“And moreover to legislate in all cases to which the separate States are incompetent; or in which the harmony of the United States may be interrupted by the exercise of individual legislation,” being read for a question,—

Mr. BUTLER calls for some explanation of the extent of this power; particularly of the word *incompetent*. The vagueness of the terms rendered it impossible for any precise judgment to be formed.

Mr. GORHAM. The vagueness of the terms constitutes the propriety of them. We are now establishing general principles, to be extended hereafter into details, which will be precise and explicit.

Mr. RUTLEDGE urged the objection started by Mr. BUTLER; and moved that the clause should be committed, to the end that a specification of the powers comprised in the general terms, might be reported.

On the question for commitment, the votes were equally divided,—Connecticut, Maryland, Virginia, South Carolina, Georgia, aye—5; Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, no—5. So it was lost.

Mr. RANDOLPH. The vote of this morning (invol-

ving an equality of suffrage in the second branch) had embarrassed the business extremely. All the powers given in the Report from the Committee of the Whole were founded on the supposition that a proportional representation was to prevail in both branches of the Legislature. When he came here this morning, his purpose was to have offered some propositions that might, if possible, have united a great majority of votes, and particularly might provide against the danger suspected on the part of the smaller States, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases.* But finding from the preceding vote, that they persist in demanding an equal vote in all cases; that they have succeeded in obtaining it; and that New York, if present, would probably be on the same side; he could not but think we were unprepared to discuss this subject further. It will probably be in vain to come to any final decision, with a bare majority on either side. For these reasons he wished the Convention to adjourn, that the large States might consider the steps proper to be taken, in the present solemn crisis of the business; and that the small States might also deliberate on the means of conciliation.

Mr. PATTERSON thought with Mr. RANDOLPH, that it was high time for the Convention to adjourn; that the rule of secrecy ought to be rescinded; and that our constituents should be consulted. No conciliation could be admissible on the part of the smaller

* See the paper, in the Appendix, communicated by Mr. RANDOLPH to J. MADISON, July 10, No. —

States, on any other ground than that of an equality of votes in the second branch. If Mr. RANDOLPH would reduce to form his motion for an adjournment *sine die*, he would second it with all his heart.

General PINCKNEY wished to know of Mr. RANDOLPH, whether he meant an adjournment *sine die*, or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to South Carolina and returning again to this place. Besides it was chimerical, to suppose that the States, if consulted, would ever accord separately and beforehand.

Mr. RANDOLPH had never entertained an idea of an adjournment *sine die*; and was sorry that his meaning had been so readily and strangely misinterpreted. He had in view merely an adjournment till to-morrow, in order that some conciliatory experiment might, if possible, be devised; and that in case the smaller States should continue to hold back, the larger might then take such measures—he would not say what—as might be necessary.

Mr. PATTERSON seconded the adjournment till to-morrow, as an opportunity seemed to be wished by the larger States to deliberate further on conciliatory expedients.

On the question for adjourning till to-morrow, the States were equally divided,—New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, aye—5; Massachusetts, Connecticut, Delaware, South Carolina, Georgia, no—5; so it was lost.

Mr. BROOME thought it his duty to declare his opinion against an adjournment *sine die*, as had been urged by Mr. PATTERSON. Such a measure, he

thought, would be fatal. Something must be done by the Convention, though it should be by a bare majority.

Mr. GERRY observed, that Massachusetts was opposed to an adjournment, because they saw no new ground of compromise. But as it seemed to be the opinion of so many States that a trial should be made, the State would now concur in the adjournment.

Mr. RUTLEDGE could see no need of an adjournment, because he could see no chance of a compromise. The little States were fixed. They had repeatedly and solemnly declared themselves to be so. All that the large States, then, had to do was, to decide whether they would yield or not. For his part, he conceived, that, although we could not do what we thought best in itself, we ought to do something. Had we not better keep the Government up a little longer, hoping that another convention will supply our omissions, than abandon every thing to hazard? Our constituents will be very little satisfied with us, if we take the latter course.

Mr. RANDOLPH and Mr. KING renewed the motion to adjourn till to-morrow.

On the question,—Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, aye—7; Connecticut, Delaware, no—2; Georgia, divided.

Adjourned.

[On the morning following, before the hour of the Convention, a number of the members from the larger States, by common agreement, met for the purpose

of consulting on the proper steps to be taken in consequence of the vote in favor of an equal representation in the second branch, and the apparent inflexibility of the smaller States on that point. Several members from the latter States also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared, indeed, that the opinions of the members who disliked the equality of votes differed much as to the importance of that point; and as to the policy of risking a failure of any general act of the Convention by inflexibly opposing it. Several of them—supposing that no good government could or would be built on that foundation; and that, as a division of the Convention into two opinions was unavoidable, it would be better that the side comprising the principal States, and a majority of the people of America, should propose a scheme of government to the States, than that a scheme should be proposed on the other side—would have concurred in a firm opposition to the smaller States, and in a separate recommendation, if eventually necessary. Others seemed inclined to yield to the smaller States, and to concur in such an act, however imperfect and exceptionable, as might be agreed on by the Convention as a body, though decided by a bare majority of States and by a minority of the people of the United States. It is probable that the result of this consultation satisfied the smaller States, that they had nothing to apprehend from a union of the larger in any plan whatever against the equality of votes in the second branch.]

TUESDAY, JULY 17TH.

In Convention,—Mr. GOUVERNEUR MORRIS moved to reconsider the whole Resolution agreed to yesterday concerning the constitution of the two branches of the Legislature. His object was to bring the House to a consideration, in the abstract, of the powers necessary to be vested in the General Government. It had been said, Let us know how the government is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the Government, as that it might be justly and properly enabled to administer them. He feared, if we proceeded to a consideration of the powers, whilst the vote of yesterday, including an equality of the States in the second branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers. This motion was not seconded. [It was probably approved by several members who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller States.]

The sixth Resolution in the Report of the Committee of the Whole, relating to the powers, which had been postponed in order to consider the seventh and eighth, relating to the constitution, of the National Legislature, was now resumed.

Mr. SHERMAN observed, that it would be difficult to draw the line between the powers of the General Legislature, and those to be left with the States ;

that he did not like the definition contained in the Resolution ; and proposed, in its place, to the words "individual legislation," inclusive, to insert "to make laws binding on the people of the United States in all cases which may concern the common interests of the Union ; but not to interfere with the government of the individual States in any matters of internal police which respect the government of such States only, and wherein the general welfare of the United States is not concerned."

Mr. WILSON seconded the amendment, as better expressing the general principle.

Mr. GOUVERNEUR MORRIS opposed it. The internal police, as it would be called and understood by the States, ought to be infringed in many cases, as in the case of paper-money, and other tricks by which citizens of other States may be affected.

Mr. SHERMAN, in explanation of his idea, read an enumeration of powers, including the power of levying taxes on trade, but not the power of *direct taxation*.

Mr. GOUVERNEUR MORRIS remarked the omission, and inferred, that, for the deficiencies of taxes on consumption, it must have been the meaning of Mr. SHERMAN that the General Government should recur to quotas and requisitions, which are subversive of the idea of government.

Mr. SHERMAN acknowledged that his enumeration did not include direct taxation. Some provision, he supposed, must be made for supplying the deficiency of other taxation, but he had not formed any.

On the question on Mr. SHERMAN's motion, it passed in the negative,—Connecticut, Maryland, aye

—2; Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no—8.

Mr. BEDFORD moved that the second member of the sixth Resolution be so altered as to read, “and moreover to legislate in all cases for the general interests of the Union, and also in those to which the States are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.”

Mr. GOUVERNEUR MORRIS seconds the motion.

Mr. RANDOLPH. This is a formidable idea, indeed. It involves the power of violating all the laws and Constitutions of the States, and of intermeddling with their police. The last member of the sentence is also superfluous, being included in the first.

Mr. BEDFORD. It is not more extensive or formidable than the clause as it stands: *no State being separately competent to legislate for the general interest of the Union.*

On the question for agreeing to Mr. BEDFORD's motion, it passed in the affirmative,—Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, aye—6; Connecticut, Virginia, South Carolina, Georgia, no—4.

On the sentence as amended, it passed in the affirmative,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, aye—8; South Carolina, Georgia, no—2.

The next clause, “To negative all laws passed by the several States contravening, in the opinion of the National Legislature, the Articles of Union, or

any treaties subsisting under the authority of the Union," was then taken up.

Mr. GOUVERNEUR MORRIS opposed this power as likely to be terrible to the States, and not necessary if sufficient Legislative authority should be given to the General Government.

Mr. SHERMAN thought it unnecessary; as the Courts of the States would not consider as valid any law contravening the authority of the Union, and which the Legislature would wish to be negatived.

Mr. L. MARTIN considered the power as improper and inadmissible. Shall all the laws of the States be sent up to the General Legislature before they shall be permitted to operate?

Mr. MADISON considered the negative on the laws of the States as essential to the efficacy and security of the General Government. The necessity of a General Government proceeds from the propensity of the States to pursue their particular interests, in opposition to the general interest. This propensity will continue to disturb the system unless effectually controlled. Nothing short of a negative on their laws will control it. They will pass laws which will accomplish their injurious objects before they can be repealed by the General Legislature, or set aside by the National tribunals. Confidence cannot be put in the state tribunals as guardians of the National authority and interests. In all the States these are more or less dependent on the Legislatures. In Georgia they are appointed annually by the Legislature. In Rhode Island the Judges who refused to execute an unconstitutional law were displaced, and others substituted, by the Legislature,

who would be the willing instruments of the wicked and arbitrary plans of their masters. A power of negating the improper laws of the States is at once the most mild and certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system. Nothing could maintain the harmony and subordination of the various parts of the Empire, but the prerogative by which the Crown stifles in the birth every act of every part tending to discord or encroachment. It is true the prerogative is sometimes misapplied, through ignorance or partiality to one particular part of the Empire; but we have not the same reason to fear such misapplications in our system. As to the sending all laws up to the National Legislature, that might be rendered unnecessary by some emanation of the power into the States, so far at least as to give a temporary effect to laws of immediate necessity.

Mr. GOUVERNEUR MORRIS was more and more opposed to the negative. The proposal of it would disgust all the States. A law that ought to be negated, will be set aside in the Judiciary department; and if that security should fail, may be repealed by a National law.

Mr. SHERMAN. Such a power involves a wrong principle, to wit, that a law of a State contrary to the Articles of the Union would, if not negated, be valid and operative.

Mr. PINCKNEY urged the necessity of the negative.

On the question for agreeing to the power of negating laws of States, &c. it passed in the negative,—Massachusetts, Virginia, North Carolina, aye—3; Connecticut, New Jersey, Pennsylvania,

Delaware, Maryland, South Carolina, Georgia, no
—7.

Mr. L. MARTIN moved the following resolution, "That the Legislative acts of the United States made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective States, as far as those acts or treaties shall relate to the said States, or their citizens and inhabitants; and that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding;" which was agreed to, *nem. con.*

The ninth Resolution being taken up, the first clause, "That a National Executive be instituted, to consist of a single person," was agreed to, *nem. con.*

The next clause, "To be chosen by the National Legislature," being considered,—

Mr. GOUVERNEUR MORRIS was pointedly against his being so chosen. He will be the mere creature of the Legislature, if appointed and impeachable by that body. He ought to be elected by the people at large, by the freeholders of the country. That difficulties attend this mode, he admits. But they have been found superable in New York and in Connecticut, and would, he believed, be found so in the case of an Executive for the United States. If the people should elect, they will never fail to prefer some man of distinguished character, or services; some man, if he might so speak, of continental reputation. If the Legislature elect, it will

be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. He moved to strike out "National Legislature," and insert "citizens of the United States."

Mr. SHERMAN thought that the sense of the nation would be better expressed by the Legislature, than by the people at large. The latter will never be sufficiently informed of characters, and besides will never give a majority of votes to any one man. They will generally vote for some man in their own State, and the largest State will have the best chance for the appointment. If the choice be made by the Legislature, a majority of voices may be made necessary to constitute an election.

Mr. WILSON. Two arguments have been urged against an election of the Executive magistrate by the people. The first is, the example of Poland, where an election of the supreme magistrate is attended with the most dangerous commotions. The cases, he observed, were totally dissimilar. The Polish nobles have resources and dependants which enable them to appear in force, and to threaten the Republic as well as each other. In the next place, the electors all assemble at one place; which would not be the case with us. The second argument is, that a majority of the people would never concur. It might be answered, that the concurrence of a majority of the people is not a necessary principle of election, nor required as such in any of the States. But allowing the objection all its force, it may be obviated by the expedient used in Massa-

chusetts, where the Legislature, by a majority of voices, decide in case a majority of the people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue and cabal. A particular objection with him against an absolute election by the Legislature was, that the Executive in that case would be too dependent to stand the mediator between the intrigues and sinister views of the Representatives and the general liberties and interests of the people.

Mr. PINCKNEY did not expect this question would again have been brought forward; an election by the people being liable to the most obvious and striking objections. They will be led by a few active and designing men. The most populous States, by combining in favor of the same individual, will be able to carry their points. The national Legislature being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

Mr. GOUVERNEUR MORRIS. It is said, that in case of an election by the people the populous States will combine and elect whom they please. Just the reverse. The people of such States cannot combine. If there be any combination, it must be among their Representatives in the Legislature. It is said, the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a Governor of New York, it sometimes is the case in particular spots, that the activity and intrigues of

little partizans are successful ; but the general voice of the State is never influenced by such artifices. It is said, the multitude will be uninformed. It is true they would be uninformed of what passed in the Legislative conclave, if the election were to be made there ; but they will not be uninformed of those great and illustrious characters which have merited their esteem and confidence. If the Executive be chosen by the national Legislature, he will not be independent of it ; and if not independent, usurpation and tyranny on the part of the Legislature will be the consequence. This was the case in England in the last century. It has been the case in Holland, where their Senates have engrossed all power. It has been the case every where. He was surprised that an election by the people at large should ever have been likened to the Polish election of the first Magistrate. An election by the Legislature will bear a real likeness to the election by the Diet of Poland. The great must be the electors in both cases, and the corruption and cabal which are known to characterize the one would soon find their way into the other. Appointments made by numerous bodies are always worse than those made by single responsible individuals or by the people at large.

Col. MASON. It is curious to remark the different language held at different times. At one moment we are told that the Legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue and corruption, and cannot be trusted at all. But not to dwell on this inconsistency, he would observe that a

government which is to last ought at least to be practicable. Would this be the case if the proposed election should be left to the people at large? He conceived it would be as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would, to refer a trial of colors to a blind man. The extent of the country renders it impossible, that the people can have the requisite capacity to judge of the respective pretensions of the candidates.

Mr. WILSON could not see the contrariety stated by (Col. MASON.) The Legislature might deserve confidence in some respects, and distrust in others. In acts which were to affect them and their constituents precisely alike, confidence was due; in others, jealousy was warranted. The appointment to great offices, where the Legislature might feel many motives not common to the public, confidence was surely misplaced. This branch of business, it was notorious, was the most corruptly managed, of any that had been committed to legislative bodies.

Mr. WILLIAMSON conceived that there was the same difference between an election, in this case, by the people and by the Legislature, as between an appointment by lot and by choice. There are at present distinguished characters, who are known perhaps to almost every man. This will not always be the case. The people will be sure to vote for some man in their own State; and the largest State will be sure to succeed. This will not be Virginia, however. Her slaves will have no suffrage. As the salary of the Executive will be fixed and he

will not be eligible a second time, there will not be such a dependence on the Legislature as has been imagined.

On the question on an election by the people, instead of the Legislature, it passed in the negative,—Pennsylvania, aye—1; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no—9.

Mr. L. MARTIN moved that the Executive be chosen by Electors appointed by the several Legislatures of the individual States.

Mr. BROOME seconds.

On the question, it passed in the negative,—Delaware, Maryland, aye—2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—8.

On the question on the words, “to be chosen by the National Legislature,” it passed unanimously in the affirmative.

“For the term of seven years,”—postponed, *nem. con.*, on motion of Mr. HOUSTON and Mr. GOUVERNEUR MORRIS.

“To carry into execution the national laws,”—agreed to, *nem. con.*

“To appoint to offices in cases not otherwise provided for,”—agreed to, *nem. con.*

“To be ineligible a second time,”—Mr. HOUSTON moved to strike out this clause.

Mr. SHERMAN seconds the motion.

Mr. GOUVERNEUR MORRIS espoused the motion. The ineligibility proposed by the clause, as it stood, tended to destroy the great motive to good behaviour, the hope of being rewarded by a re-appoint-

ment. It was saying to him, make hay while the sun shines.

On the question for striking out, as moved by Mr. Houston, it passed in the affirmative,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Georgia, aye—6; Delaware, Virginia, North Carolina, South Carolina, no—4.

The clause, “for the term of seven years,” being resumed,—

Mr. BROOME was for a shorter term, since the Executive Magistrate was now to be re-eligible. Had he remained ineligible a second time, he should have preferred a longer term.

Doctor M'CLURG* moved to strike out seven years, and insert “during good behaviour.” By striking out the words declaring him not re-eligible, he was put into a situation that would keep him dependent forever on the Legislature; and he conceived the independence of the Executive to be equally essential with that of the Judiciary department.

Mr. GOUVERNEUR MORRIS seconded the motion. He expressed great pleasure in hearing it. This was the way to get a good Government. His fear that so valuable an ingredient would not be attained had led him to take the part he had done. He was indifferent how the Executive should be chosen, provided he held his place by this tenure.

Mr. BROOME highly approved the motion. It obviated all his difficulties.

* The probable object of this motion was merely to enforce the argument against the re-eligibility of the Executive magistrate, by holding out a tenure during good behaviour as the alternative for keeping him independent of the Legislature.

Mr. SHERMAN considered such a tenure as by no means safe or admissible. As the Executive Magistrate is now re-eligible, he will be on good behaviour as far as will be necessary. If he behaves well, he will be continued; if otherwise, displaced, on a succeeding election.

Mr. MADISON.* If it be essential to the preservation of liberty that the Legislative, Executive, and Judiciary powers be separate, it is essential to a maintenance of the separation, that they should be independent of each other. The Executive could not be independent of the Legislature, if dependent on the pleasure of that branch for a re-appointment. Why was it determined that the Judges should not hold their places by such a tenure? Because they might be tempted to cultivate the Legislature, by an undue complaisance, and thus render the Legislature the virtual expositor, as well as the maker of the laws. In like manner, a dependence of the Executive on the Legislature would render it the executor as well as the maker of laws; and then, according to the observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner. There was an analogy between the Executive and Judiciary departments in several respects. The latter executed the laws in certain cases as the former did in others. The former expounded and applied them for certain purposes, as the latter did for others. The difference

* The view here taken of the subject was meant to aid in parrying the animadversions likely to fall on the motion of Doctor McClurg, for whom J. M. had a particular regard. The Doctor, though possessing talents of the highest order, was modest and unaccustomed to exert them in public debate.

between them seemed to consist chiefly in two circumstances,—first, the collective interest and security were much more in the power belonging to the Executive, than to the Judiciary, department; secondly, in the administration of the former, much greater latitude is left to opinion and discretion, than in the administration of the latter. But if the second consideration proves that it will be more difficult to establish a rule sufficiently precise for trying the Executive, than the Judges, and forms an objection to the same tenure of office, both considerations prove that it might be more dangerous to suffer a union between the Executive and Legislative powers, than between the Judiciary and Legislative powers. He conceived it to be absolutely necessary to a well constituted Republic, that the two first should be kept distinct and independent of each other. Whether the plan proposed by the motion was a proper one, was another question; as it depended on the practicability of instituting a tribunal for impeachments as certain and as adequate in the one case, as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing and discussion, until a less objectionable expedient should be applied for guarding against a dangerous union of the Legislative and Executive departments.

Colonel MASON. This motion was made some time ago, and negatived by a very large majority. He trusted that it would be again negatived. It would be impossible to define the misbehaviour in such a manner as to subject it to a proper trial; and perhaps still more impossible to compel so high

an offender, holding his office by such a tenure, to submit to a trial. He considered an Executive during good behaviour as a softer name only for an Executive for life. And that the next would be an easy step to hereditary monarchy. If the motion should finally succeed, he might himself live to see such a revolution. If he did not, it was probable his children or grand children would. He trusted there were few men in that House who wished for it. No State, he was sure, had so far revolted from republican principles, as to have the least bias in its favor.

Mr. MADISON was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our government to throw all power into the Legislative vortex. The Executives of the States are in general little more than cyphers; the Legislatures omnipotent. If no effectual check be devised for restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of republican government therefore required some expedient for the purpose, but required evidently, at the same time, that, in devising it, the genuine principles of that form should be kept in view.

Mr. GOUVERNEUR MORRIS was as little a friend to monarchy as any gentleman. He concurred in the opinion that the way to keep out monarchical government was to establish such a Republican government as would make the people happy, and prevent a desire of change.

DOCT. McCLURG was not so much afraid of the shadow of monarchy, as to be unwilling to approach it; nor so wedded to republican government, as not to be sensible of the tyrannies that had been and may be exercised under that form. It was an essential object with him to make the Executive independent of the Legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him during good behaviour.

On the question for inserting "during good behaviour," in place of "seven years [with a re-eligibility]," it passed in the negative,—New Jersey, Pennsylvania, Delaware, Virginia, aye—4; Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, no—6.*

On the motion to strike out "seven years," it passed in the negative,—Massachusetts, Pennsylvania, Delaware, North Carolina, aye—4; Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, no—6.†

* This vote is not to be considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the Executive on the Legislature, and thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an Executive "during good behaviour" were not more than three or four, nor is it certain they would have adhered to such a tenure.

An independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community, seemed to be generally admitted as the true basis of a well constructed Government.

† There was no debate on this motion. The apparent object of many in the affirmative was to secure the re-eligibility by shortening the term, and of many in the negative to embarrass the plan of referring the appointment and dependence of the Executive to the Legislature.

It was now unanimously agreed, that the vote which had struck out the words "to be ineligible a second time," should be reconsidered to-morrow.

Adjourned.

WEDNESDAY JULY 18TH.

In Convention,—On motion of Mr. L. MARTIN to fix to-morrow for reconsidering the vote concerning the ineligibility of the Executive a second time, it passed in the affirmative,—Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye—8; New Jersey, Georgia, absent.

The residue of the ninth Resolution, concerning the Executive, was postponed till to-morrow.

The tenth Resolution, "that the Executive shall have a right to negative legislative acts not afterwards passed by two-thirds of each branch," was passed, *nem. con.*

The eleventh Resolution, "that a National Judiciary shall be established to consist of one supreme tribunal," agreed to *nem. con.*

On the clause, "The judges of which to be appointed by the second branch of the National Legislature,"—

Mr. GORHAM would prefer an appointment by the second branch to an appointment by the whole Legislature; but he thought even that branch too numerous, and too little personally responsible, to en-

sure a good choice. He suggested that the Judges be appointed by the Executive with the advice and consent of the second branch, in the mode prescribed by the Constitution of Massachusetts. This mode had been long practised in that country, and was found to answer perfectly well.

Mr. WILSON would still prefer an appointment by the Executive; but if that could not be attained, would prefer, in the next place, the mode suggested by Mr. GORHAM. He thought it his duty, however, to move in the first instance, "that the Judges be appointed by the Executive."

Mr. GOUVERNEUR MORRIS seconded the motion.

Mr. L. MARTIN was strenuous for an appointment by the second branch. Being taken from all the the States, it would be best informed of characters, and most capable of making a fit choice.

Mr. SHERMAN concurred in the observations of Mr. MARTIN, adding that the Judges ought to be diffused, which would be more likely to be attended to by the second branch, than by the Executive.

Mr. MASON. The mode of appointing the Judges may depend in some degree on the mode of trying impeachments of the Executive. If the Judges were to form a tribunal for that purpose, they surely ought not to be appointed by the Executive. There were insuperable objections besides against referring the appointment to the Executive. He mentioned, as one, that as the seat of government must be in some one State; and as the Executive would remain in office for a considerable time, for four, five, or six years at least, he would insensibly form local and personal attachments within the particular

State that would deprive equal merit elsewhere of an equal chance of promotion.

Mr. GORHAM. As the Executive will be responsible, in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the States for proper characters. The Senators will be as likely to form their attachments at the seat of government where they reside, as the Executive. If they cannot get the man of the particular State to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue and cabal. Rhode Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonourable measures, and of the length to which a public body may carry wickedness and cabal.

Mr. GOUVERNEUR MORRIS supposed it would be improper for an impeachment of the Executive to be tried before the Judges. The latter would in such case be drawn into intrigues with the Legislature, and an impartial trial would be frustrated. As they would be much about the seat of government, they might even be previously consulted, and arrangements might be made for a prosecution of the Executive. He thought, therefore, that no argument could be drawn from the probability of such a plan of impeachments against the motion before the House.

Mr. MADISON suggested, that the Judges might be appointed by the Executive, with the concurrence of one-third at least of the second branch. This would unite the advantage of responsibility in the

Executive, with the security afforded in the second branch against any incautious or corrupt nomination by the Executive.

Mr. SHERMAN was clearly for an election by the Senate. It would be composed of men nearly equal to the Executive, and would of course have on the whole more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them, than with the Executive Magistrate. For these reasons he thought there would be a better security for a proper choice in the Senate, than in the Executive.

Mr. RANDOLPH. It is true that when the appointment of the Judges was vested in the second branch an equality of votes had not been given to it. Yet he had rather leave the appointment there than give it to the Executive. He thought the advantage of personal responsibility might be gained in the Senate, by requiring the respective votes of the members to be entered on the Journal. He thought, too, that the hope of receiving appointments would be more diffusive, if they depended on the Senate, the members of which would be diffusively known, than if they depended on a single man, who could not be personally known to a very great extent; and consequently, that opposition to the system would be so far weakened.

Mr. BEDFORD thought, there were solid reasons against leaving the appointment to the Executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger States by gratifying them with a preference of their

citizens. The responsibility of the Executive, so much talked of, was chimerical. He could not be punished for mistakes.

Mr. GORHAM remarked, that the Senate could have no better information than the Executive. They must like him trust to information from the members belonging to the particular State where the candidate resided. The Executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would fall on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honourable minds was a sufficient one.

On the question for referring the appointment of the Judges to the Executive, instead of the second branch,—Massachusetts, Pennsylvania, aye—2; Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, no—6; Georgia, absent.

Mr. GORHAM moved, "that the Judges be nominated and appointed by the Executive, by and with the advice and consent of the second branch; and every such nomination shall be made at least —— days prior to such appointment." This mode, he said, had been ratified by the experience of a hundred and forty years in Massachusetts. If the appointment should be left to either branch of the Legislature, it will be a mere piece of jobbing.

Mr. GOUVERNEUR MORRIS seconded and supported the motion.

Mr. SHERMAN thought it less objectionable than an absolute appointment by the Executive; but disliked it, as too much fettering the Senate.

On the question on Mr. GORHAM's motion,—Mas-

sachusetts, Pennsylvania, Maryland, Virginia, aye—4; Connecticut, Delaware, North Carolina, South Carolina, no—4; Georgia, absent.

Mr. MADISON moved, "that the Judges should be nominated by the Executive, and such nomination should become an appointment if not disagreed to within —— days by two-thirds of the second branch."

Mr. GOUVERNEUR MORRIS seconded the motion.

By common consent the consideration of it was postponed till to-morrow.

"To hold their offices during good behaviour, and to receive fixed salaries,"—agreed to, *nem. con.*

"In which [salaries of Judges] no increase or diminution shall be made so as to affect the persons actually in office at the time."

Mr. GOUVERNEUR MORRIS moved to strike out "or increase." He thought the Legislature ought to be at liberty to increase salaries, as circumstances might require; and that this would not create any improper dependence in the Judges.

Doctor FRANKLIN was in favor of the motion. Money may not only become plentier; but the business of the Department may increase, as the country becomes more populous.

Mr. MADISON. The dependence will be less if the *increase alone* should be permitted; but it will be improper even so far to permit a dependence. Whenever an increase is wished by the Judges, or may be in agitation in the Legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in court suits to which leading members of the Legislature may be parties, the Judges will be in a situation which

ought not to be suffered, if it can be prevented. The variations in the value of money may be guarded against by taking for a standard wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may easily be so contrived as not to affect persons in office.

Mr. GOUVERNEUR MORRIS. The value of money may not only alter, but the state of society may alter. In this event, the same quantity of wheat, the same value, would not be the same compensation. The amount of salaries must always be regulated by the manners and the style of living in a country. The increase of business cannot be provided for in the supreme tribunal, in the way that has been mentioned. All the business of a certain description, whether more or less, must be done in that single tribunal. Additional labor alone in the Judges can provide for additional business. Additional compensation, therefore, ought not to be prohibited.

On the question for striking out, "or increase,"—Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, aye—6; Virginia, North Carolina, no—2; Georgia, absent.

The whole clause, as amended, was then agreed to, *nem. con.*

The twelfth Resolution, "that the National Legislature be empowered to appoint inferior tribunals," being taken up,—

Mr. BUTLER could see no necessity for such tribunals. The State tribunals might do the business.

Mr. L. MARTIN concurred. They will create jealousies and oppositions in the State tribunals, with the jurisdiction of which they will interfere.

Mr. GORHAM. There are in the States already Federal Courts, with jurisdiction for trial of piracies, &c. committed on the seas. No complaints have been made by the States or the courts of the States. Inferior tribunals are essential to render the authority of the National Legislature effectual.

Mr. RANDOLPH observed, that the courts of the States cannot be trusted with the administration of the National laws. The objects of jurisdiction are such as will often place the general and local policy at variance.

Mr. GOUVERNEUR MORRIS urged also the necessity of such a provision.

Mr. SHERMAN was willing to give the power to the Legislature, but wished them to make use of the State tribunals, whenever it could be done with safety to the general interest.

Col. MASON thought many circumstances might arise, not now to be foreseen, which might render such a power absolutely necessary.

On the question for agreeing to the twelfth Resolution, empowering the National Legislature to appoint inferior tribunals,—it was agreed to, *nem. con.*

The clause of "Impeachments of national officers," was struck out, on motion for the purpose.

The thirteenth Resolution, "The jurisdiction of the National Judiciary, &c." being then taken up, several criticisms having been made on the definition, it was proposed by Mr. MADISON so to alter it as to read thus; "that the jurisdiction shall extend

to all cases arising under the national laws; and to such other questions as may involve the national peace and harmony;" which was agreed to, *nem. con.*

The fourteenth Resolution, providing for the admission of new States, was agreed to, *nem. con.*

The fifteenth Resolution, "that provision ought to be made for the continuance of Congress, &c. and for the completion of their engagements," being considered,—

Mr. GOUVERNEUR MORRIS thought the assumption of their engagements might as well be omitted; and that Congress ought not to be continued till all the States should adopt the reform; since it may become expedient to give effect to it whenever a certain number of States shall adopt it.

Mr. MADISON. The clause can mean nothing more than that provision ought to be made for preventing an interregnum; which must exist, in the interval between the adoption of the new Government and the commencement of its operation, if the old Government should cease on the first of these events.

Mr. WILSON did not entirely approve of the manner in which the clause relating to the engagements of Congress was expressed; but he thought some provision on the subject would be proper in order to prevent any suspicion that the obligations of the Confederacy might be dissolved along with the Government under which they were contracted.

On the question on the first part, relating to the continuance of Congress,—Virginia, North Carolina, South Carolina,* aye—3; Massachusetts, Con-

* In the printed Journal, South Carolina, no.

necticut, Pennsylvania, Delaware, Maryland, Georgia, no—6. The second part, as to the completion of their engagements, was disagreed to, *nem. con.*

The sixteenth Resolution, "That a republican Constitution and its existing laws ought to be guaranteed to each State by the United States" being considered,—

Mr. GOUVERNEUR MORRIS thought the Resolution very objectionable. He should be very unwilling that such laws as exist in Rhode Island should be guaranteed.

Mr. WILSON. The object is merely to secure the States against dangerous commotions, insurrections and rebellions.

Col. MASON. If the General Government should have no right to suppress rebellions against particular States, it will be in a bad situation indeed. As rebellions against itself originate in and against individual States, it must remain a passive spectator of its own subversion.

Mr. RANDOLPH. The Resolution has two objects,—first, to secure a republican government; secondly, to suppress domestic commotions. He urged the necessity of both these provisions.

Mr. MADISON moved to substitute, "that the constitutional authority of the States shall be guaranteed to them respectively against domestic as well as foreign violence."

Doctor McCLURG seconded the motion.

Mr. HOUSTON was afraid of perpetuating the existing Constitutions of the States. That of Georgia was a very bad one, and he hoped would be revised and amended. It may also be difficult for the Gen-

eral Government to decide between contending parties, each of which claim the sanction of the Constitution.

Mr. L. MARTIN was for leaving the States to suppress rebellions themselves.

Mr. GORHAM thought it strange that a rebellion should be known to exist in the Empire, and the General Government should be restrained from interposing to subdue it. At this rate an enterprising citizen might erect the standard of monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole, and the General Government be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State, as long as they confine their disputes to words, they will be harmless to the General Government and to each other. If they appeal to the sword, it will then be necessary for the General Government, however difficult it may be, to decide on the merits of their contest, to interpose and put an end to it.

Mr. CARROLL. Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a *casus fœderis* at present; and no room ought to be left for such a doubt hereafter.

Mr. RANDOLPH moved to add, as an amendment to the motion, "and that no State be at liberty to form any other than a republican government."

Mr. MADISON seconded the motion.

Mr. RUTLEDGE thought it unnecessary to insert any guarantee. No doubt could be entertained but

that Congress had the authority, if they had the means, to co-operate with any State in subduing a rebellion. It was and would be involved in the nature of the thing.

Mr. WILSON moved, as a better expression of the idea, "that a republican form of Government shall be guaranteed to each State; and that each State shall be protected against foreign and domestic violence."

This seeming to be well received, Mr. MADISON and Mr. RANDOLPH withdrew their propositions, and on the question for agreeing to Mr. WILSON's motion, it passed, *nem. con.*

Adjourned.

THURSDAY, JULY 19TH.

In Convention,—On re-consideration of the vote rendering the Executive re-eligible a second time, Mr. MARTIN moved to re-instate the words, "to be ineligible a second time."

Mr. GOUVERNEUR MORRIS. It is necessary to take into one view all that relates to the establishment of the Executive; on the due formation of which must depend the efficacy and utility of the union among the present and future States. It has been a maxim in political science, that republican government is not adapted to a large extent of country, because the energy of the executive magistracy cannot reach the extreme parts of it. Our country is an extensive one. We must either then renounce the blessings of the Union, or provide an Executive

with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it. One great object of the Executive is, to control the Legislature. The Legislature will continually seek to aggrandize and perpetuate themselves; and will seize those critical moments produced by war, invasion, or convulsion, for that purpose. It is necessary, then, that the Executive magistrate should be the guardian of the people, even of the lower classes, against legislative tyranny; against the great and the wealthy, who in the course of things will necessarily compose the legislative body. Wealth tends to corrupt the mind;—to nourish its love of power; and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the second branch was not meant as a check on legislative usurpations of power, but on the abuse of lawful powers, on the propensity of the first branch to legislate too much, to run into projects of paper-money, and similar expedients. It is no check on legislative tyranny. On the contrary it may favor it; and, if the first branch can be seduced, may find the means of success. The Executive, therefore, ought to be so constituted, as to be the great protector of the mass of the people. It is the duty of the Executive to appoint the officers, and to command the forces, of the Republic; to appoint, first, ministerial officers for the administration of public affairs; secondly, officers for the dispensation of justice. Who will be the best judges whether these appointments be well made? The people at large, who will know, will see, will feel, the effects

of them. Again, who can judge so well of the discharge of military duties for the protection and security of the people, as the people themselves, who are to be protected and secured? He finds, too, that the Executive is not to be re-eligible. What effect will this have? In the first place, it will destroy the great incitement to merit, public esteem, by taking away the hope of being rewarded with a re-appointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble and illustrious actions. Shut the civil road to glory, and he may be compelled to seek it by the sword. In the second place, it will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends. In the third place, it will produce violations of the very Constitution it is meant to secure. In moments of pressing danger, the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution. The Executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence, that he will be no check on the Legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the Legislature. These, then, are the faults of the Executive establishment, as now proposed. Can no better establishment be devised? If he is to be the guardian of the people, let him be appointed by the people. If he is to be a check on the Legislature, let him not be impeachable. Let him be of short

duration, that he may with propriety be re-eligible. It has been said that the candidates for this office will not be known to the people. If they be known to the Legislature, they must have such a notoriety and eminence of character, that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust, without having his character proclaimed by fame throughout the Empire. As to the danger from an unimpeachable magistrate, he could not regard it as formidable. There must be certain great officers of state, a minister of finance, of war, of foreign affairs, &c. These, he presumes, will exercise their functions in subordination to the Executive, and will be amenable, by impeachment, to the public justice. Without these ministers, the Executive can do nothing of consequence. He suggested a biennial election of the Executive, at the time of electing the first branch; and the Executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large, throughout so great an extent of country, could not be influenced by those little combinations and those momentary lies, which often decide popular elections within a narrow sphere. It will probably be objected, that the election will be influenced by the members of the Legislature, particularly of the first branch; and that it will be nearly the same thing with an election by the Legislature itself. It could not be denied that such an influence would exist. But it might be answered, that as the Legislature or the candidates for it, would be divided the enmity

of one part would counteract the friendship of another; that if the administration of the Executive were good, it would be unpopular to oppose his re-election; if bad, it ought to be opposed, and a re-appointment prevented; and lastly, that in every view this indirect dependence on the favor of the Legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the Executive independent of the Legislature, but either to give him his office for life, or make him eligible by the people. Again, it might be objected, that two years would be too short a duration. But he believes that as long as he should behave himself well he would be continued in his place. The extent of the country would secure his re-election against the factions and discontents of particular States. It deserved consideration, also, that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish and move that the whole constitution of the Executive might undergo re-consideration.

Mr. RANDOLPH urged the motion of Mr. L. MARTIN for restoring the words making the Executive ineligible a second time. If he ought to be independent, he should not be left under a temptation to court a re-appointment. If he should be re-appointable by the Legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought and contended; as he still did, that the danger apprehended by the little States was chimerical; but those who thought otherwise ought to be pecu-

liarly anxious for the motion. If the Executive be appointed, as has been determined, by the Legislature, he will probably be appointed, either by joint ballot of both houses, or be nominated by the first and appointed by the second branch. In either case the large States will preponderate. If he is to court the same influence for his re-appointment, will he not make his revisionary power, and all the other functions of his administration, subservient to the views of the large States? Besides, is there not great reason to apprehend, that, in case he should be re-eligible, a false complaisance in the Legislature might lead them to continue an unfit man in office, in preference to a fit one? It has been said, that a constitutional bar to re-appointment, will inspire unconstitutional endeavours to perpetuate himself. It may be answered, that his endeavours can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless; to which may be added, that this argument supposes him to be more powerful and dangerous, than other arguments which have been used admit, and consequently calls for stronger fetters on his authority. He thought an election by the Legislature, with an incapacity to be elected a second time, would be more acceptable to the people than the plan suggested by Mr. GOUVERNEUR MORRIS.

Mr. KING did not like the ineligibility. He thought there was great force in the remarks of Mr. SHERMAN, that he who has proved himself most fit for an office, ought not to be excluded by the Constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He

was much disposed to think, that in such cases the people at large would choose wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole, he was of opinion that an appointment by electors chosen by the people for the purpose would be liable to fewest objections.

Mr. PATTERSON's ideas nearly coincided, he said, with those of Mr. KING. He proposed that the Executive should be appointed by electors, to be chosen by the States in a ratio that would allow one elector to the smallest, and three to the largest, States.

Mr. WILSON. It seems to be the unanimous sense that the Executive should not be appointed by the Legislature, unless he be rendered ineligible a second time: he perceived with pleasure that the idea was gaining ground of an election, mediately or immediately, by the people.

Mr. MADISON. If it be a fundamental principle of free government that the Legislative, Executive and Judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same, and perhaps greater, reason why the Executive should be independent of the Legislature, than why the Judiciary should. A coalition of the two former powers, would be more immediately and certainly dangerous to public liberty. It is essential, then, that the appointment of the Executive should either be drawn from some source, or held by some tenure, that will give him a free agency with regard to the Legislature. This could not be, if he

was to be appointable, from time to time, by the Legislature. It was not clear that an appointment in the first instance, even with an ineligibility afterwards, would not establish an improper connection between the two Departments. Certain it was, that the appointment would be attended with intrigues and contentions, that ought not to be unnecessarily admitted. He was disposed, for these reasons, to refer the appointment to some other source. The people at large was, in his opinion, the fittest in itself. It would be as likely as any that could be devised, to produce an Executive Magistrate of distinguished character. The people generally could only know and vote for some citizen whose merits had rendered him an object of general attention and esteem. There was one difficulty, however, of a serious nature, attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election, on the score of the negroes. The substitution of Electors obviated this difficulty, and seemed on the whole to be liable to fewest objections.

Mr. GERRY. If the Executive is to be elected by the Legislature, he certainly ought not to be re-eligible. This would make him absolutely dependent. He was against a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the Executive, by Electors to be chosen by the State Executives. The people of the States will then choose the first branch; the Legislatures of the States, the second branch of the National Legisla-

ture; and the Executives of the States, the National Executive. This he thought would form a strong attachment in the States to the National system. The popular mode of electing the Chief Magistrate would certainly be the worst of all. If he should be so elected, and should do his duty, he will be turned out for it, like Governor Bowdoin in Massachusetts, and President Sullivan in New Hampshire.

On the question on Mr. GOUVERNEUR MORRIS's motion, to reconsider generally the constitution of the Executive,—Massachusetts, Connecticut, New Jersey, and all the others, aye.

Mr. ELLSWORTH moved to strike out the appointment by the National Legislature, and to insert, "to be chosen by Electors, appointed by the Legislatures of the States in the following ratio; to wit: one for each State not exceeding two hundred thousand inhabitants; two for each above that number and not exceeding three hundred thousand; and three for each State exceeding three hundred thousand."

Mr. BROOME seconded the motion.

Mr. RUTLEDGE was opposed to all the modes, except the appointment by the National Legislature. He will be sufficiently independent, if he be not re-eligible.

Mr. GERRY preferred the motion of Mr. ELLSWORTH to an appointment by the National Legislature, or by the people; though not to an appointment by the State Executives. He moved that the Electors proposed by Mr. ELLSWORTH should be twenty-five in number, and allotted in the following proportion: to New Hampshire, one; to Massachu-

setts, three; to Rhode Island, one; to Connecticut, two; to New York, two; to New Jersey, two; to Pennsylvania, three; to Delaware, one; to Maryland, two; to Virginia, three; to North Carolina, two; to South Carolina, two; to Georgia, one.

The question, as moved by Mr. ELLSWORTH, being divided, on the first part "Shall the National Executive be appointed by Electors?"—Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, aye—6; North Carolina, South Carolina, Georgia, no—3; Massachusetts, divided.

On the second part, "Shall the Electors be chosen by the State Legislatures?"—Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, aye—8; Virginia, South Carolina, no—2.

The part relating to the ratio in which the States should choose Electors was postponed, *nem. con.*

Mr. L. MARTIN moved that the Executive be ineligible a second time.

Mr. WILLIAMSON seconds the motion. He had no great confidence in electors to be chosen for the special purpose. They would not be the most respectable citizens; but persons not occupied in the high offices of government. They would be liable to undue influence, which might the more readily be practised, as some of them will probably be in appointment six or eight months before the object of it comes on.

Mr. ELLSWORTH supposed any persons might be appointed Electors, except, solely, members of the National Legislature.

On the question, "Shall he be ineligible a second

time?"—North Carolina, South Carolina, aye—2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no—8.

On the question, "Shall the Executive continue for seven years?" It passed in the negative,—* Connecticut, South Carolina, Georgia, aye—3; * New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no—5; Massachusetts, North Carolina, divided.

Mr. KING was afraid we should shorten the term too much.

Mr. GOUVERNEUR MORRIS was for a short term, in order to avoid impeachments, which would be otherwise necessary.

Mr. BUTLER was against the frequency of the elections. Georgia and South Carolina were too distant to send electors often.

Mr. ELLSWORTH was for six years. If the elections be too frequent, the Executive will not be firm enough. There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins*. His administration, therefore, will be attacked and misrepresented.

Mr. WILLIAMSON was for six years. The expense will be considerable, and ought not to be unnecessarily repeated. If the elections are too frequent, the best men will not undertake the service, and those of an inferior character will be liable to be corrupted.

On the question for six years,—Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland,

* In the printed Journal, Connecticut, no: New Jersey, aye.

Virginia, North Carolina, South Carolina, Georgia, aye—9; Delaware, no.

Adjourned.

FRIDAY, JULY 20TH.

In Convention,—The proposed ratio of Electors for appointing the Executive, to wit: one for each State whose inhabitants do not exceed two hundred thousand, &c., being taken up,—

Mr. MADISON observed that this would make, in time, all or nearly all the States equal, since there were few that would not in time contain the number of inhabitants entitling them to three Electors; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the States.

Mr. GERRY moved that *in the first instance* the Electors should be allotted to the States in the following ratio: to New Hampshire, one; Massachusetts, three; Rhode Island one; Connecticut, two; New York, two; New Jersey, two; Pennsylvania, three; Delaware, one; Maryland, two; Virginia, three; North Carolina, two; South Carolina, two; Georgia, one.

On the question to postpone in order to take up this motion of Mr. GERRY, it passed in the affirmative,—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, aye—6; Connecticut, New Jersey, Delaware, Maryland, no—4.

Mr. ELLSWORTH moved that two Electors be allotted to New Hampshire. Some rule ought to be

pursued; and New Hampshire has more than a hundred thousand inhabitants. He thought it would be proper also to allot two to Georgia.

Mr. BROOM and Mr. MARTIN moved to postpone Mr. GERRY's allotment of Electors, leaving a fit ratio to be reported by the Committee to be appointed for detailing the Resolutions.

On this motion,—New Jersey, Delaware, Maryland, aye—3; Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—7.

Mr. HOUSTON seconded the motion of Mr. ELLSWORTH to add another Elector to New Hampshire and Georgia.

On the question,—Connecticut, South Carolina, Georgia, aye—3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no—7.

Mr. WILLIAMSON moved as an amendment to Mr. GERRY's allotment of Electors, in the first instance, that in future elections of the National Executive the number of Electors to be appointed by the several States shall be regulated by their respective numbers of representatives in the first branch, pursuing as nearly as may be, the present proportions.

On the question on Mr. GERRY's ratio of Electors,—Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, aye—6; New Jersey, Delaware, Maryland, Georgia, no—4.

On the clause, "to be removable on impeachment and conviction for malpractice or neglect of duty," (see the ninth Resolution),—

Mr. PINCKNEY and Mr. GOUVERNEUR MORRIS moved
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to strike out this part of the Resolution. Mr. PINCKNEY observed, he ought not to be impeachable whilst in office.

Mr. DAVIE. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He considered this as an essential security for the good behaviour of the Executive.

Mr. WILSON concurred in the necessity of making the Executive impeachable whilst in office.

Mr. GOUVERNEUR MORRIS. He can do no criminal act without coadjutors, who may be punished. In case he should be re-elected, that will be a sufficient proof of his innocence. Besides, who is to impeach? Is the impeachment to suspend his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement; and will render the Executive dependent on those who are to impeach.

Colonel MASON. No point is of more importance than that the right of impeachment should be continued. Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice? When great crimes were committed, he was for punishing the principal as well as the coadjutors. There had been much debate and difficulty as to the mode of choosing the Executive. He approved of that which had been adopted at first, namely, of referring the appointment to the National Legislature. One objection against Electors was the danger of their being corrupted by the candidates, and this furnished a peculiar reason in favor of impeachments whilst in office. Shall

the man who has practised corruption, and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?

Doctor FRANKLIN was for retaining the clause as favorable to the Executive. History furnishes one example only of a First Magistrate being formally brought to public justice. Every body cried out against this as unconstitutional. What was the practice before this, in cases where the Chief Magistrate rendered himself obnoxious? Why, recourse was had to assassination, in which he was not only deprived of his life, but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the Executive, where his misconduct should deserve it, and for his honorable acquittal, where he should be unjustly accused.

Mr. GOUVERNEUR MORRIS admits corruption, and some few other offences, to be such as ought to be impeachable; but thought the cases ought to be enumerated and defined.

Mr. MADISON thought it indispensable that some provision should be made for defending the community against the incapacity, negligence, or perfidy of the Chief Magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers. The case of the Executive magistracy was very distinguishable from that of the Legislature, or any other public body, holding

offices of limited duration. It could not be presumed that all, or even the majority, of the members of an Assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides, the restraints of their personal integrity and honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members would maintain the integrity and fidelity of the body. In the case of the Executive magistracy, which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

Mr. PINCKNEY did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature, who would in that case hold them as a rod over the Executive, and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

Mr. GERRY urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here, that the chief magistrate could do no wrong.

Mr. KING expressed his apprehensions that an extreme caution in favor of liberty, might enervate the government we were forming. He wished the House to recur to the primitive axiom, that the three great departments of government should be separate and independent; that the Executive and

Judiciary should be so as well as the Legislative; that the Executive should be so equally with the Judiciary. Would this be the case if the Executive should be impeachable? It had been said, that the Judiciary would be impeachable. But it should have been remembered, at the same time, that the Judiciary hold their places not for a limited time, but during good behaviour. It is necessary, therefore, that a form should be established for trying misbehaviour. Was the Executive to hold his place during good behaviour? The Executive was to hold his place for a limited time, like the members of the Legislature. Like them, particularly the Senate, whose members would continue in appointment the same term of six years, he would periodically be tried for his behaviour by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them, therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he held his office during good behaviour, a tenure which would be most agreeable to him, provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the Legislature. This would be destructive of his independence, and of the principles of the Constitution. He relied on the vigor of the Executive, as a great security for the public liberties.

MR. RANDOLPH. The propriety of impeachments was a favorite principle with him. Guilt, wherever found, ought to be punished. The Executive will have great opportunities of abusing his power; par-

ticularly in time of war, when the military force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Colonel HAMILTON), of composing a forum out of the Judges belonging to the States; and even of requiring some preliminary inquest, whether just ground of impeachment existed.

DOCTOR FRANKLIN mentioned the case of the Prince of Orange, during the late war. An arrangement was made between France and Holland, by which their two fleets were to unite at a certain time and place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the Stadtholder was at the bottom of the matter. This suspicion prevailed more and more. Yet as he could not be impeached, and no regular examination took place, he remained in his office; and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities and contentions. Had he been impeachable, a regular and peaceable inquiry would have taken place, and he would, if guilty, have been duly punished,—if innocent, restored to the confidence of the public.

MR. KING remarked, that the case of the Stadtholder was not applicable. He held his place for life, and was not periodically elected. In the former

case, impeachments are proper to secure good behaviour. In the latter, they are unnecessary; the periodical responsibility to the Electors being an equivalent security.

Mr. WILSON observed, that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment and removal.

Mr. PINCKNEY apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him. He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. GOUVERNEUR MORRIS's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any length of time in office. Our Executive was not like a magistrate having a life interest, much less, like one having an hereditary interest, in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the First Magistrate in foreign pay, without being able to guard against it by displacing him. One would think the King of England well secured against bribery. He has, as it were, a fee simple in the whole Kingdom. Yet Charles II. was bribed by Louis XIV. The Executive ought, therefore, to be impeachable for treachery. Corrupting his Electors, and incapacity, were other causes of impeachment. For the latter he should be punished, not as a man, but as an officer, and punished on-

ly by degradation from his office. This Magistrate is not the King, but the prime minister. The people are the King. When we make him amenable to justice, however, we should take care to provide some mode that will not make him dependent on the Legislature.

It was moved and seconded to postpone the question of impeachments; which was negatived,—Massachusetts and South Carolina, only, being aye.

On the question, Shall the Executive be removable on impeachments, &c. ?—Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, aye—8; Massachusetts, South Carolina, no—2.

“The Executive to receive fixed compensation,”—agreed to, *nem. con.*

“To be paid out of the National Treasury,”—agreed to, New Jersey only in the negative.

Mr. GERRY and Mr. GOUVERNEUR MORRIS moved, “that the Electors of the Executive shall not be members of the National Legislature, nor officers of the United States, nor shall the Electors themselves be eligible to the supreme magistracy.” Agreed to, *nem. con.*

Doctor McCLURG asked, whether it would not be necessary, before a committee for detailing the Constitution should be appointed, to determine on the means by which the Executive is to carry the laws into effect, and to resist combinations against them. Is he to have a military force for the purpose, or to have the command of the Militia, the only existing force that can be applied to that use? As the Res-

olutions now stand, the Committee will have no determinate directions on this great point.

Mr. WILSON thought that some additional directions to the Committee would be necessary.

Mr. KING. The Committee are to provide for the end. Their discretionary power to provide for the means is involved, according to an established axiom.

Adjourned.

SATURDAY, JULY 21ST.

In Convention,—Mr. WILLIAMSON moved, “that the Electors of the Executive should be paid out of the National Treasury for the service to be performed by them.” Justice required this, as it was a national service they were to render. The motion was agreed to, *nem. con.*

Mr. WILSON moved, as an amendment to the tenth Resolution, “that the Supreme National Judiciary should be associated with the Executive in the revisionary power.” This proposition had been before made and failed; but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort. The Judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said, that the Judges, as expositors of the laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws

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may be unjust, may be unwise, may be dangerous, may be destructive ; and yet may not be so unconstitutional as to justify the Judges in refusing to give them effect. Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the Legislature.—Mr. MADISON seconded the motion.

Mr. GORHAM did not see the advantage of employing the Judges in this way. As Judges they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The Judges in England have no such additional provision for their defence, yet their jurisdiction is not invaded. He thought it would be best to let the Executive alone be responsible, and at most to authorize him to call on the Judges for their opinions.

Mr. ELLSWORTH approved heartily of the motion. The aid of the Judges will give more wisdom and firmness to the Executive. They will possess a systematic and accurate knowledge of the laws, which the Executive cannot be expected always to possess. The Law of Nations also will frequently come into question. Of this the Judges alone will have competent information.

Mr. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the Judiciary Department by giving it an additional opportunity of defending itself against Legislative encroachments. It

would be useful to the Executive, by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the Legislature, by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws, qualities peculiarly necessary, and yet shamefully wanting in our Republican codes. It would, moreover, be useful to the community at large, as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must be on the supposition that it tended to give too much strength, either to the Executive, or Judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended, that, notwithstanding this co-operation of the two departments, the Legislature would still be an overmatch for them. Experience in all the States had evinced a powerful tendency in the Legislature to absorb all power into its vortex. This was the real source of danger to the American Constitutions; and suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

Mr. MASON said, he had always been a friend to this provision. It would give a confidence to the Executive, which he would not otherwise have, and without which the revisionary power would be of little avail.

Mr. GERRY did not expect to see this point, which had undergone full discussion, again revived. The

object he conceived of the revisionary power was merely to secure the Executive department against Legislative encroachment. The Executive, therefore, who will best know and be ready to defend his rights, ought alone to have the defence of them. The motion was liable to strong objections. It was combining and mixing together the Legislative and the other departments. It was establishing an improper coalition between the Executive and Judiciary departments. It was making statesmen of the Judges, and setting them up as the guardians of the rights of the people. He relied, for his part, on the Representatives of the people, as the guardians of their rights and interests. It was making the expositors of the laws the legislators, which ought never to be done. A better expedient for correcting the laws would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill, to draw bills for the Legislature.

Mr. STRONG thought, with Mr. GERRY, that the power of making, ought to be kept distinct from that of expounding, the laws. No maxim was better established. The Judges in exercising the function of expositors might be influenced by the part they had taken in passing the laws.

Mr. GOUVERNEUR MORRIS. Some check being necessary on the Legislature, the question is, in what hands it should be lodged? On one side, it was contended, that the Executive alone ought to exercise it. He did not think that an Executive appointed for six years, and impeachable whilst in office, would be a very effectual check. On the other side, it was urged, that he ought to be reinforced by the Judici-

ary department. Against this it was objected, that expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was, that the Judges in England had a great share in the legislation. They are consulted in difficult and doubtful cases. They may be, and some of them are, members of the Legislature. They are, or may be, members of the Privy Council; and can there advise the Executive, as they will do with us if the motion succeeds. The influence the English Judges may have, in the latter capacity, in strengthening the Executive check, cannot be ascertained, as the King, by his influence, in a manner dictates the laws. There is one difference in the two cases, however, which disconcerts all reasoning from the British to our proposed Constitution. The British Executive has so great an interest in his prerogatives, and such power for means of defending them, that he will never yield any part of them. The interest of our Executive is so inconsiderable and so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting encroachments. He was extremely apprehensive that the auxiliary firmness and weight of the Judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from Legislative usurpations, than from any other source. It had been said that the Legislature ought to be relied on, as the proper guardians of liberty. The answer was short and conclusive. Either bad laws will be

pushed, or not. On the latter supposition, no check will be wanted. On the former, a strong check will be necessary. And this is the proper supposition. Emissions of paper-money, largesses to the people, a remission of debts, and similar measures, will at some times be popular, and will be pushed for that reason. At other times, such measures will coincide with the interests of the Legislature themselves, and that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case. But experience teaches another lesson. The press is indeed a great means of diminishing the evil; yet it is found to be unable to prevent it altogether.

Mr. L. MARTIN considered the association of the Judges with the Executive, as a dangerous innovation; as well as one that could not produce the particular advantage expected from it. A knowledge of mankind, and of Legislative affairs, cannot be presumed to belong in a higher degree to the Judges than to the Legislature. And as to the constitutionality of laws, that point will come before the Judges in their official character. In this character they have a negative on the laws. Join them with the Executive in the revision, and they will have a double negative. It is necessary that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating against popular measures of the Legislature. Besides, in what mode and proportion are they to vote in the Council of Revision?

Mr. MADISON could not discover in the proposed association of the Judges with the Executive, in the

revisionary check on the Legislature, any violation of the maxim which requires the great departments of power to be kept separate and distinct. On the contrary, he thought it an auxiliary precaution, in favor of the maxim. If a constitutional discrimination of the departments on paper were a sufficient security to each against encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security; and that it is necessary to introduce such a balance of powers and interests as will guarantee the provisions on paper. Instead, therefore, of contenting ourselves with laying down the theory in the Constitution, that each department ought to be separate and distinct, it was proposed to add a defensive power to each, which should maintain the theory in practice. In so doing, we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British Constitution. Yet it was not only the practice there to admit the Judges to a seat in the Legislature, and in the Executive Councils, and submit to their previous examination all laws of a certain description, but it was a part of their Constitution that the Executive might negative any law whatever; a part of *their* Constitution which had been universally regarded as calculated for the preservation of the whole. The objection against a union of the Judiciary and Executive branches, in the revision of the laws, had either no foundation, or was not carried far enough. If such a union was an improper mixture of powers, or such a Judiciary check on the laws was inconsist-

ent with the theory of a free constitution, it was equally so to admit the Executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Colonel MASON observed, that the defence of the Executive was not the sole object of the revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the constitution of the Legislature, it would still so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect, not only of hindering the final passage of such laws, but would discourage demagogues from attempting to get them passed. It has been said (by Mr. L. MARTIN), that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply, that in this capacity they could impede, in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law, however unjust, oppressive or pernicious, that did not come plainly under this description, they would be under the necessity, as Judges, to give it a free course. He wished the further use to be made of the Judges of giving aid in preventing every improper law. Their aid will be the more valuable, as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

Mr. WILSON. The separation of the departments

does not require that they should have separate objects; but that they should act separately, though on the same objects. It is necessary that the two branches of the Legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr. GERRY had rather give the Executive an absolute negative for its own defence, than thus to blend together the Judiciary and Executive departments. It will bind them together in an offensive and defensive alliance against the Legislature, and render the latter unwilling to enter into a contest with them.

Mr. GOUVERNEUR MORRIS was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws. Would it not be very natural for the two latter, after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that, as a security against legislative acts of the former, which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defence; or at least to have an opportunity of stating their objections against acts of encroachment? And would any one pretend, that such a right tended to blend and confound powers that ought to be separately exercised? As well might it be said that if three neighbours had three distinct farms, a right in each to defend his

farm against his neighbours, tended to blend the farms together.

Mr. GORHAM. All agree that a check on the Legislature is necessary. But there are two objections against admitting the Judges to share in it, which no observations on the other side seem to obviate. The first is, that the Judges ought to carry into the exposition of the laws no prepossessions with regard to them; the second, that, as the Judges will outnumber the Executive, the revisionary check would be thrown entirely out of the Executive hands, and, instead of enabling him to defend himself, would enable the Judges to sacrifice him.

Mr. WILSON. The proposition is certainly not liable to all the objections which have been urged against it. According to (Mr. GERRY), it will unite the Executive and Judiciary in an offensive and defensive alliance against the Legislature. According to (Mr. GORHAM), it will lead to a subversion of the Executive by the Judiciary influence. To the first gentleman the answer was obvious: that the joint weight of the two Departments was necessary to balance the single weight of the Legislature. To the first objection stated by the other gentleman it might be answered, that, supposing the prepossession to mix itself with the exposition, the evil would be over-balanced by the advantages promised by the expedient. To the second objection, that such a rule of voting might be provided, in the detail, as would guard against it.

Mr. RUTLEDGE thought the Judges of all men the most unfit to be concerned in the Revisionary Council. The Judges ought never to give their opinion

on a law, till it comes before them. He thought it equally unnecessary. The Executive could advise with the officers of state, as of War, Finance, &c., and avail himself of their information and opinions.

On the question on Mr. WILSON's motion for joining the Judiciary in the revision of laws, it passed in the negative,—Connecticut, Maryland, Virginia, aye—3; Massachusetts, Delaware, North Carolina, South Carolina, no—4; Pennsylvania, Georgia, divided; New Jersey, not present. ²⁸²

The tenth Resolution, giving the Executive a qualified veto, requiring two-thirds of each branch of the Legislature to overrule it, was then agreed to *nem. con.*

The motion made by Mr. MADISON, on the eighteenth of July, and then postponed, "that the Judges should be nominated by the Executive, and such nominations become appointments unless disagreed to by two-thirds of the second branch of the Legislature," was now resumed. ²⁸³

Mr. MADISON stated as his reasons for the motion: first, that it secured the responsibility of the Executive, who would in general be more capable and likely to select fit characters than the Legislature, or even the second branch of it, who might hide their selfish motives under the number concerned in the appointment. Secondly, that in case of any flagrant partiality or error in the nomination, it might be fairly presumed that two-thirds of the second branch would join in putting a negative on it. Thirdly, that as the second branch was very differently constituted, when the appointment of the Judges was formerly referred to it, and was now to be composed of equal votes from all the States, the principle

of compromise which had prevailed in other instances required in this that there should be a concurrence of two authorities, in one of which the people, in the other the States, should be represented. The Executive magistrate would be considered as a national officer, acting for and equally sympathizing with every part of the United States. If the second branch alone should have this power, the Judges might be appointed by a minority of the people, though by a majority of the States; which could not be justified on any principle, as their proceedings were to relate to the people rather than to the States; and as it would, moreover, throw the appointments entirely into the hands of the Northern States, a perpetual ground of jealousy and discontent would be furnished to the Southern States.

Mr. PINCKNEY was for placing the appointment in the second branch exclusively. The Executive will possess neither the requisite knowledge of characters, nor confidence of the people, for so high a trust.

Mr. RANDOLPH would have preferred the mode of appointment proposed formerly by Mr. GORHAM, as adopted in the Constitution of Massachusetts, but thought the motion depending so great an improvement of the clause as it stands, that he anxiously wished it success. He laid great stress on the responsibility of the Executive, as a security for fit appointments. Appointments by the Legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail, if the appointments be referred to either branch of the Legis-

lature, or to any other authority administered by a number of individuals.

Mr. ELLSWORTH would prefer a negative in the Executive on a nomination by the second branch, the negative to be overruled by a concurrence of two-thirds of the second branch, to the mode proposed by the motion, but preferred an absolute appointment the second branch to either. The Executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary, it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses and intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

MR. GOUVERNEUR MORRIS supported the motion. First, the States, in their corporate capacity, will frequently have an interest staked on the determination of the Judges. As in the Senate the States are to vote, the Judges ought not to be appointed by the Senate. Next to the impropriety of being judge in one's own cause, is the appointment of the Judge. Secondly, it had been said, the Executive would be uninformed of characters. The reverse was the truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The Executive, in the necessary intercourse with every part of the United States required by the nature of his administration, will or may have the best possible information. Thirdly, it had been said that a jealousy would be entertained of the Executive. If the Ex-

ecutive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of jealousy in the present case. He added, that if the objections against an appointment of the Executive by the Legislature had the weight that had been allowed, there must be some weight in the objection to an appointment of the Judges by the Legislature, or by any part of it.

Mr. GERRY. The appointment of the Judges, like every other part of the Constitution, should be so modelled as to give satisfaction both to the people and to the States. The mode under consideration will give satisfaction to neither. He could not conceive that the Executive could be as well informed of characters throughout the Union, as the Senate. It appeared to him, also, a strong objection, that two-thirds of the Senate were required to reject a nomination of the Executive. The Senate would be constituted in the same manner as Congress, and the appointments of Congress have been generally good.

Mr. MADISON observed, that he was not anxious that two-thirds should be necessary, to disagree to a nomination. He had given this form to his motion, chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Col. MASON found it his duty to differ from his colleagues in their opinions and reasonings on this subject. Notwithstanding the form of the proposition, by which the appointment seemed to be divided between the Executive and Senate, the appointment was substantially vested in the former alone.

The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the Executive as a dangerous prerogative. It might even give him an influence over the Judiciary Department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate, and require some precautions in the case of regulating navigation, commerce and imposts; but he could not see that it had any connection with the Judiciary department.

On the question, the motion being now, "that the Executive should nominate, and such nominations should become appointments unless disagreed to by the Senate," Massachusetts, Pennsylvania, Virginia, aye—3; Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, no—6.

On the question for agreeing to the clause as it stands, by which the Judges are to be appointed by the second branch,—Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, aye—6; Massachusetts, Pennsylvania, Virginia, no—3; so it passed in the affirmative,

Adjourned.

July
MONDAY, ~~JUNE~~ 23^d.

In Convention,—Mr. JOHN LANGDON and Mr. NICHOLAS GILLMAN, from New Hampshire, took their seats.

The seventeenth Resolution, that provision ought

to be made for future amendments of the Articles of the Union, was agreed to, *nem. con.*

The eighteenth Resolution, requiring the Legislative, Executive and Judiciary of the States to be bound by oath to support the Articles of Union, was taken into consideration.

Mr. WILLIAMSON suggests, that a reciprocal oath should be required from the National officers, to support the Governments of the States.

Mr. GERRY moved to insert, as an amendment, that the oath of the officers of the National Government also should extend to the support of the National Government, which was agreed to, *nem. con.*

Mr. WILSON said, he was never fond of oaths, considering them as a left-handed security only. A good government did not need them, and a bad one could not or ought not to be supported. He was afraid they might too much trammel the members of the existing government, in case future alterations should be necessary; and prove an obstacle to the seventeenth Resolution, just agreed to.

Mr. GORHAM did not know that oaths would be of much use; but could see no inconsistency between them and the seventeenth Resolution, or any regular amendment of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution could never be regarded as a breach of the Constitution, or of any oath to support it.

Mr. GERRY thought, with Mr. GORHAM, there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the Resolution. On the other side, he thought one good

effect would be produced by it. Hitherto the officers of the two Governments had considered them as distinct from, and not as parts of, the general system, and had, in all cases of interference given a preference to the State Governments. The proposed oath will cure that error.

The Resolution (the eighteenth) was agreed to, *nem con.*

The nineteenth Resolution, referring the new Constitution to Assemblies to be chosen by the people, for the express purpose of ratifying it, was next taken into consideration.

Mr. ELLSWORTH moved that it be referred to the Legislatures of the States for ratification. Mr. PATTERSON seconded the motion.

Colonel MASON considered a reference of the plan to the authority of the people, as one of the most important and essential of the Resolutions. The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators. And he knew of no power in any of the Constitutions—he knew there was no power in some of them—that could be competent to this object. Whither, then, must we resort? To the people, with whom all power remains that has not been given up in the constitutions derived from them. It was of great moment, he observed, that this doctrine should be cherished, as the basis of free government. Another strong reason was, that admitting the Legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding Legislatures, having equal authority, could undo the acts of their

predecessors; and the National Government would stand in each State on the weak and tottering foundation of an act of Assembly. There was a remaining consideration, of some weight. In some of the States, the governments were not derived from the clear and undisputed authority of the people. This was the case in Virginia. Some of the best and wisest citizens considered the Constitution as established by an assumed authority. A National Constitution derived from such a source would be exposed to the severest criticisms.

Mr. RANDOLPH. One idea has pervaded all our proceedings, to wit., that opposition as well from the States as from individuals, will be made to the system to be proposed. Will it not then be highly imprudent to furnish any unnecessary pretext, by the mode of ratifying it? Added to other objections against a ratification by the Legislative authority only, it may be remarked, that there have been instances in which the authority of the common law has been set up in particular States against that of the Confederation, which has had no higher sanction than Legislative ratification. Whose opposition will be most likely to be excited against the system? That of the local demagogues who will be degraded by it, from the importance they now hold. These will spare no efforts to impede that progress in the popular mind, which will be necessary to the adoption of the plan; and which every member will find to have taken place in his own, if he will compare his present opinions with those he brought with him into the Convention. It is of great importance, therefore, that the consideration of this subject

should be transferred from the Legislatures, where this class of men have their full influence, to a field in which their efforts can be less mischievous. It is moreover worthy of consideration, that some of the States are averse to any change in their Constitution, and will not take the requisite steps, unless expressly called upon, to refer the question to the people.

Mr. GERRY. The arguments of Colonel MASON and Mr. RANDOLPH prove too much. They prove an unconstitutionality in the present Federal system, and even in some of the State Governments. Inferences drawn from such a source must be inadmissible. Both the State Governments and the Federal Government have been too long acquiesced in, to be now shaken. He considered the Confederation to be paramount to any State Constitution. The last Article of it, authorizing alterations, must consequently be so as well as the others; and every thing done in pursuance of the article, must have the same high authority with the article. Great confusion, he was confident, would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose, that the people will do what their rulers will not. The rulers will either conform to, or influence the sense of the people.

Mr. GORHAM was against referring the plan to the Legislatures. 1. Men chosen by the people for the particular purpose will discuss the subject more candidly than members of the Legislature, who are to lose the power which is to be given up to the General Government. 2. Some of the Legislatures are

composed of several branches. It will consequently be more difficult, in these cases, to get the plan through the Legislatures, than through a Convention. 3. In the States, many of the ablest men are excluded from the Legislatures, but may be elected into a Convention. Among these may be ranked many of the clergy, who are generally friends to good government. Their services were found to be valuable in the formation and establishment of the Constitution of Massachusetts. 4. The Legislatures will be interrupted with a variety of little business; by artfully pressing which, designing men will find means to delay from year to year, if not to frustrate altogether, the national system. 5. If the last Article of the confederation is to be pursued, the unanimous concurrence of the States will be necessary. But will any one say that all the States are to suffer themselves to be ruined, if Rhode Island should persist in her opposition to general measures? Some other States might also tread in her steps. The present advantage, which New York seems to be so much attached to, of taxing her neighbours by the regulation of her trade, makes it very probable that she will be of the number. It would, therefore, deserve serious consideration, whether provision ought not to be made for giving effect to the system, without waiting for the unanimous concurrence of the States.

MR. ELLSWORTH. If there be any Legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents and pursue such a mode as would be competent. He thought more was to be expected

from the Legislatures, than from the people. The prevailing wish of the people in the Eastern States is, to get rid of the public debt; and the idea of strengthening the National Government carries with it that of strengthening the public debt. It was said by Colonel MASON,—in the first place, that the Legislatures have no authority in this case; and in the second, that their successors, having equal authority, could rescind their acts. As to the second point he could not admit it to be well founded. An act to which the States, by their Legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the first point, he observed that a new set of ideas seemed to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The Legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congress applied on subsequent occasions for further powers? To the Legislatures, not to the people. The fact is, that we exist at present, and we need not inquire how, as a federal society, united by a charter, one article of which is, that alterations therein may be made by the Legislative authority of the States. It has been said, that if the Confederation is to be observed, the States must *unanimously* concur in the proposed innovations. He would answer, that if such were the urgency and necessity of our situation as to warrant a new compact among a part of the States, founded on the consent of the people; the same pleas would be

equally valid, in favor of a partial compact, founded on the consent of the Legislatures.

Mr. WILLIAMSON thought the Resolution (the nineteenth) so expressed, as that it might be submitted either to the Legislatures or to Conventions recommended by the Legislatures. He observed that some Legislatures were evidently unauthorized to ratify the system. He thought, too, that Conventions were to be preferred, as more likely to be composed of the ablest men in the States.

Mr. GOUVERNEUR MORRIS considered the inference of Mr. ELLSWORTH from the plea of necessity, as applied to the establishment of a new system, on the consent of the people of a part of the States, in favor of a like establishment, on the consent of a part of the Legislatures, as a *non-sequitur*. If the Confederation is to be pursued, no alteration can be made without the unanimous consent of the Legislatures. Legislative alterations not conformable to the Federal compact would clearly not be valid. The Judges would consider them as null and void. Whereas, in case of an appeal to the people of the United States, the supreme authority, the Federal compact may be altered by a *majority of them*, in like manner as the Constitution of a particular State may be altered by a majority of the people of the State. The amendment moved by Mr. ELLSWORTH erroneously supposes, that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

Mr. KING thought with Mr. ELLSWORTH that the Legislatures had a competent authority, the acquiescence of the people of America in the Confedera-

tion being equivalent to a formal ratification by the people. He thought with Mr. ELLSWORTH, also, that the plea of necessity was as valid in the one case, as the other. At the same time, he preferred a reference to the authority of the people expressly delegated to Conventions, as the most certain means of obviating all disputes and doubts concerning the legitimacy of the new Constitution, as well as the most likely means of drawing forth the best men in the States to decide on it. He remarked that among other objections, made in the State of New York to granting powers to Congress, one had been, that such powers as would operate within the States could not be reconciled to the Constitution, and therefore were not grantable by the Legislative authority. He considered it as of some consequence, also, to get rid of the scruples which some members of the State Legislatures might derive from their oaths to support and maintain the existing Constitutions.

Mr. MADISON thought it clear that the Legislatures were incompetent to the proposed changes. These changes would make essential inroads on the State Constitutions; and it would be a novel and dangerous doctrine, that a Legislature could change the Constitution under which it held its existence. There might indeed be some Constitutions within the Union, which had given a power to the Legislature to concur in alterations of the Federal compact. But there were certainly some which had not; and in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the Legisla-

tures only, and one founded on the people, to be the true difference between a *league* or *treaty*, and a *Constitution*. The former, in point of *moral obligation*, might be as inviolable as the latter. In point of *political operation*, there were two important distinctions in favor of the latter. First, a law violating a treaty ratified by a pre-existing law might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a Constitution established by the people themselves, would be considered by the Judges as null and void. Secondly, the doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes, in point of expediency, he thought all the considerations which recommended this Convention, in preference to Congress, for proposing the reform, were in favor of State Conventions, in preference to the Legislatures for examining and adopting it.

On the question on Mr. ELLSWORTH'S motion to refer the plan to the Legislatures of the States,—Connecticut, Delaware, Maryland, aye—3; New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no—7.

Mr. GOUVERNEUR MORRIS moved, that the reference of the plan be made to one General Convention, chosen and authorized by the people, to consider, *amend*, and establish the same. Not seconded.

On the question for agreeing to the nineteenth

Resolution, touching the mode of ratification as reported from the Committee of the Whole, viz, to refer the Constitution, after the approbation of Congress, to assemblies chosen by the people,—New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—9; Delaware, no—1. ²⁰⁵

Mr. GOUVERNEUR MORRIS and Mr. KING moved, that the representation in the second branch consist of — members from each State, who shall vote *per capita*.

Mr. ELLSWORTH said he had always approved of voting in that mode.

Mr. GOUVERNEUR MORRIS moved to fill the blank with *three*. He wished the Senate to be a pretty numerous body. If two members only should be allowed to each State, and a majority be made a quorum, the power would be lodged in fourteen members, which was too small a number for such a trust.

Mr. GORHAM preferred two to three members for the blank. A small number was most convenient for deciding on peace and war, &c., which he expected would be vested in the second branch. The number of States will also increase. Kentucky, Vermont, the Province of Maine and Franklin, will probably soon be added to the present number. He presumed also that some of the largest States would be divided. The strength of the General Government will be, not in the largeness, but the smallness, of the States.

Col. MASON thought *three* from each State, including new States, would make the second branch too

numerous. Besides other objections, the additional expense ought always to form one, where it was not absolutely necessary.

Mr. WILLIAMSON. If the number be too great, the distant States will not be on an equal footing with the nearer States. The latter can more easily send and support their ablest citizens. He approved of the voting *per capita*.

On the question for filling the blank with "*three*,"—Pennsylvania, aye—1; New Hampshire, Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, no—8.

On the question for filling it with "*two*,"—agreed to, *nem. con.*

Mr. L. MARTIN was opposed to voting *per capita*, as departing from the idea of the *States* being represented in the second branch.

Mr. CARROLL was not struck with any particular objection against the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion, viz.: "the second branch to consist of two members from each State, and to vote *per capita*,"—New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—9; Maryland, no—1.

Mr. HOUSTON and Mr. SPAIGHT moved, "that the appointment of the Executive by Electors chosen by the Legislatures of the States," be reconsidered. Mr. HOUSTON urged the extreme inconveniency and the considerable expense of drawing together men from all the States for the single purpose of electing the chief magistrate.

On the question, which was put without debate,—New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Georgia, aye—7; Pennsylvania, Maryland, Virginia, no—3.

Ordered, that tomorrow be assigned for the reconsideration;—Connecticut and Pennsylvania, no; all the rest, aye.

Mr. GERRY moved, that the proceedings of the Convention for the establishment of a National Government (except the part relating to the Executive) be referred to a Committee to prepare and report a Constitution conformable thereto.

General PINCKNEY reminded the Convention, that if the Committee should fail to insert some security to the Southern States against an emancipation of slaves, and taxes on exports, he should be bound by duty to his State to vote against their report.²⁸⁷

The appointment of a Committee, as moved by Mr. GERRY, was agreed to, *nem. con.*

On the question, Shall the Committee consist of ten members, one from each State present?—all the States were *no*, except Delaware, *aye*.

Shall it consist of seven members?—New Hampshire, Massachusetts, Connecticut, Maryland, South Carolina, aye—5; Pennsylvania, Delaware, Virginia, North Carolina, Georgia, no—5.

The question being lost by an equal division of votes, it was agreed, *nem. con.*, that the Committee should consist of five members to be appointed tomorrow.

Adjourned.

TUESDAY, JULY 24TH.

In Convention,—The appointment of the Executive by Electors being reconsidered,—

Mr. HOUSTON moved that he be appointed by the National Legislature, instead of "Electors appointed by the State Legislatures," according to the last decision of the mode. He dwelt chiefly on the improbability that capable men would undertake the service of Electors from the more distant States.

Mr. SPAIGHT seconded the motion.

Mr. GERRY opposed it. He thought there was no ground to apprehend the danger urged by Mr. HOUSTON. The election of the Executive Magistrate will be considered as of vast importance, and will create great earnestness. The best men, the Governors of the States, will not hold it derogatory from their character to be the Electors. If the motion should be agreed to, it will be necessary to make the Executive ineligible a second time, in order to render him independent of the Legislature; which was an idea extremely repugnant to his way of thinking.

Mr. STRONG supposed that there would be no necessity, if the Executive should be appointed by the Legislature, to make him ineligible a second time; as new Elections of the Legislature will have intervened; and he will not depend for his second appointment on the same set of men that his first was received from. It had been suggested that *gratitude* for his past appointment would produce the same effect as dependence for his future appointment. He thought very differently. Besides, this objection

would lie against the Electors, who would be objects of gratitude as well as the Legislature. It was of great importance not to make the government too complex, which would be the case if a new set of men, like the Electors, should be introduced into it. He thought, also, that the first characters in the States would not feel sufficient motives to undertake the office of Electors.

Mr. WILLIAMSON was for going back to the original ground, to elect the Executive for seven years, and render him ineligible a second time. The proposed Electors would certainly not be men of the first, nor even of the second, grade in the States. These would all prefer a seat in the Senate, or the other branch of the Legislature. He did not like the unity in the Executive. He had wished the Executive power to be lodged in three men, taken from three districts, into which the States should be divided. As the Executive is to have a kind of veto on the laws, and there is an essential difference of interests between the Northern and Southern States, particularly in the carrying trade, the power will be dangerous, if the Executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England; where there is a sameness of interests throughout the kingdom. Another objection against a single magistrate is, that he will be an elective king, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain, he thought, that we should at some time or other have a king; but he wished no pre-

caution to be omitted that might postpone the event as long as possible. Ineligibility a second time appeared to him to be the best precaution. With this precaution he had no objection to a longer term than seven years. He would go as far as ten or twelve years.

Mr. GERRY moved that the Legislatures of the States should vote by ballot for the Executive, in the same proportions as it had been proposed they should choose Electors; and that in case a majority of the votes should not centre on the same person, the first branch of the National Legislature should choose two out of the four candidates having most votes; and out of these two the second branch should choose the Executive.

Mr. KING seconded the motion; and on the question to postpone, in order to take it into consideration, the *noes* were so predominant, that the States were not counted.

On the question on Mr. Houston's motion, that the Executive be appointed by the National Legislature,—New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, aye—7; Connecticut, Pennsylvania, Maryland, Virginia, no—4.

Mr. L. MARTIN and Mr. GERRY moved to re-instate the ineligibility of the Executive a second time.

Mr. ELLSWORTH. With many this appears a natural consequence of his being elected by the Legislature. It was not the case with him. The Executive he thought should be re-elected if his conduct proved him worthy of it. And he will be more likely to render himself worthy of it if he be

rewardable with it. The most eminent characters, also, will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixed period.

Mr. GERRY. That the Executive should be independent of the Legislature, is a clear point. The longer the duration of his appointment, the more will his dependence be diminished. It will be better, then, for him to continue ten, fifteen, or even twenty years, and be ineligible afterwards.

Mr. KING was for making him re-eligible. This is too great an advantage to be given up, for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

Mr. L. MARTIN, suspending his motion as to the ineligibility, moved, "that the appointment of the Executive shall continue for eleven years."

Mr. GERRY suggested fifteen years.

Mr. KING twenty years.* This is the medium life of princes.

Mr. DAVIE eight years.

Mr. WILSON. The difficulties and perplexities into which the House is thrown, proceed from the election by the Legislature, which he was sorry had been re-instated. The inconvenience of this mode was such, that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper

* This might possibly be meant as a caricature of the previous motions, in order to defeat the object of them.

mode of election, unless indeed it should be during good behaviour. It seemed to be supposed that at a certain advance of life a continuance in office would cease to be agreeable to the officer, as well as desirable to the public. Experience had shown in a variety of instances, that both a capacity and inclination for public service existed in very advanced stages. He mentioned the instance of a Doge of Venice who was elected after he was eighty years of age. The Popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better concerted policy been pursued than in the Court of Rome. If the Executive should come into office at thirty-five years of age, which he presumes may happen, and his continuance should be fixed at fifteen years, at the age of fifty, in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British jurisprudence have sustained, had the age of fifty been fixed there as the ultimate limit of capacity or readiness to serve the public. The great luminary Lord Mansfield, held his seat for thirty years after his arrival at that age. Notwithstanding what had been done, he could not but hope that a better mode of election would yet be adopted; and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation, he would move that the present question be postponed till to-morrow.

Mr. BROOM seconded the motion to postpone.

Mr. GERRY. We seem to be entirely at a loss on this head. He would suggest whether it would not

be advisable to refer the clause relating to the Executive to the committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

Mr. WILSON. As the great difficulty seems to spring from the mode of election, he would suggest a mode which had not been mentioned. It was, that the Executive be elected for six years by a small number, not more than fifteen of the National Legislature, to be drawn from it, not by ballot, but by lot, and who should retire immediately and make the election without separating. By this mode intrigue would be avoided in the first instance, and the dependence would be diminished. This was not, he said, a digested idea, and might be liable to strong objections.

Mr. GOUVERNEUR MORRIS. Of all possible modes of appointment that by the Legislature is the worst. If the Legislature is to appoint, and to impeach, or to influence the impeachment, the Executive will be the mere creature of it. He had been opposed to the impeachment, but was now convinced that impeachments must be provided for, if the appointment was to be of any duration. No man would say, that an Executive known to be in the pay of an enemy should not be removable in some way or other. He had been charged heretofore, (by Col. MASON), with inconsistency in pleading for confidence in the Legislature on some occasions, and urging a distrust on others. The charge was not well founded. The Legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others.

When their interest coincides precisely with that of their constituents, as happens in many of their acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the Legislature cannot be too much distrusted. In all public bodies there are two parties. The Executive will necessarily be more connected with one than with the other. There will be a personal interest, therefore, in one of the parties, to oppose, as well as in the other to support, him. Much had been said of the intrigues that will be practised by the Executive to get into office. Nothing had been said on the other side, of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real king, the Minister. This was the way in which Pitt (Lord Chatham) forced himself into place. Fox was for pushing the matter still further. If he had carried his India bill, which he was very near doing, he would have made the Minister the king in form almost, as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature. Something has been said of the danger of monarchy. If a good government should not now be formed, if a good organization of the Executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the dependence of the Executive on the Legislature, the expedient of making him ineli-

gible a second time had been devised. This was as much as to say, we should give him the benefit of experience, and then deprive ourselves of the use of it. But make him ineligible a second time—and prolong his duration even to fifteen years—will he, by any wonderful interposition of Providence at that period, cease to be a man? No; he will be unwilling to quit his exaltation; the road to his object through the Constitution will be shut; he will be in possession of the sword; a civil war will ensue, and the commander of the victorious army, on which ever side, will be the despot of America. This consideration renders him particularly anxious that the Executive should be properly constituted. The vice here would not, as in some other parts of the system, be curable. It is the most difficult of all, rightly to balance the Executive. Make him too weak—the Legislature will usurp his power. Make him too strong—he will usurp on the Legislature. He preferred a short period, a re-eligibility, but a different mode of election. A long period would prevent an adoption of the plan. It ought to do so. He should himself be afraid to trust it. He was not prepared to decide on Mr. WILSON's mode of election just hinted by him. He thought it deserved consideration. It would be better that chance should decide than intrigue.

On the question to postpone the consideration of the resolution on the subject of the Executive,—Connecticut, Pennsylvania, Maryland, Virginia, aye—4; New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no—6; Delaware, divided.

Mr. WILSON then moved, that the Executive be chosen every —— years by —— Electors, to be taken by lot from the National Legislature, who shall proceed immediately to the choice of the Executive, and not separate until it be made.

Mr. CARROLL seconds the motion.

Mr. GERRY. This is committing too much to chance. If the lot should fall on a set of unworthy men, an unworthy Executive must be saddled on the country. He thought it had been demonstrated that no possible mode of electing by the Legislature could be a good one.

Mr. KING. The lot might fall on a majority from the same State, which would ensure the election of a man from that State. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed.

Mr. WILSON did not move this as the best mode. His opinion remained unshaken, that we ought to resort to the people for the election. He seconded the postponement.

Mr. GOUVERNEUR MORRIS observed, that the chances were almost infinite against a majority of Electors from the same State.

On a question whether the last motion was in order, it was determined in the affirmative,—ayes, 7; noes, 4.

On the question of postponement, it was agreed to, *nem. con.*

Mr. CARROLL took occasion to observe, that he considered the clause declaring that direct taxation on the States should be in proportion to representation, previous to the obtaining an actual census, as

very objectionable; and that he reserved to himself the right of opposing it, if the report of the Committee of detail should leave it in the plan.

Mr. GOUVERNEUR MORRIS hoped the Committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge* to assist us over a certain gulf; having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.

On a ballot for a committee to report a Constitution conformable to the Resolutions passed by the Convention, the members chosen were:—

Mr. RUTLEDGE, Mr. RANDOLPH, Mr. GORHAM, Mr. ELLSWORTH, Mr. WILSON.

On motion to discharge the Committee of the Whole from the propositions submitted to the Convention by Mr. C. PINCKNEY as the basis of a Constitution, and to refer them to the Committee of Detail just appointed, it was agreed to, *nem. con.*

A like motion was then made and agreed to, *nem. con.*, with respect to the propositions of Mr. PATTERSON.

Adjourned.

WEDNESDAY, JULY 25TH.

In Convention,—The clause relating to the Executive being again under consideration,—

* The object was to lessen the eagerness, on one side, for, and the opposition, on the other, to the share of representation claimed by the Southern States on account of the negroes.

Mr. ELLSWORTH moved, "that the Executive be appointed by the Legislature, except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, and be re-eligible; in which case the choice shall be by Electors appointed by the Legislatures of the States for that purpose." By this means a deserving magistrate may be re-elected without *making him dependent on the Legislature.*

Mr. GERRY repeated his remark, that an election at all by the National Legislature was radically and incurably wrong; and moved, "that the Executive be appointed by the Governors and Presidents of the States, with advice of their Councils; and where there are no Councils, by Electors chosen by the Legislatures. The Executives to vote in the following proportions, viz: ———."

Mr. MADISON. There are objections against every mode that has been, or perhaps can be, proposed. The election must be made, either by some existing authority under the National or State Constitutions, —or by some special authority derived from the people, —or by the people themselves. The two existing authorities under the National Constitution would be the Legislative and Judiciary. The latter he presumed was out of the question. The former was, in his judgment, liable to insuperable objections. Besides the general influence of that mode on the independence of the Executive, in the first place, the election of the chief magistrate would agitate and divide the Legislature so much, that the public interest would materially suffer by it. Public bodies are always apt to be thrown into conten-

tions, but into more violent ones by such occasions than by any others. In the second place, the candidate would intrigue with the Legislature; would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. In the third place, the ministers of foreign powers would have, and would make use of, the opportunity to mix their intrigues and influence with the election. Limited as the powers of the Executive are, it will be an object of great moment with the great rival powers of Europe who have American possessions, to have at the head of our government a man attached to their respective politics and interests. No pains, nor perhaps expense, will be spared, to gain from the Legislature an appointment favorable to their wishes. Germany and Poland are witnesses of this danger. In the former, the election of the Head of the Empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, although the elective magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the States are the Legislative, Executive and Judiciary. The appointment of the National Executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The Legislatures of the States had betrayed a strong propensity to a variety of pernicious measures. One object of the National Legis-

lature was to control this propensity. One object of the National Executive, so far as it would have a negative on the laws, was to control the National Legislature, so far as it might be infected with a similar propensity. Refer the appointment of the National Executive to the State Legislatures, and this controlling purpose may be defeated. The Legislatures can and will act with some kind of regular plan, and will promote the appointment of a man who will not oppose himself to a favorite object. Should a majority of the Legislatures, at the time of election, have the same object, or different objects of the same kind, the National Executive would be rendered subservient to them. An appointment by the State Executives was liable, among other objections, to this insuperable one, that being standing bodies, they could and would be courted, and intrigued with by the candidates, by their partizans, and by the ministers of foreign powers. The State Judiciaries had not been, and he presumed would not be, proposed as a proper source of appointment. The option before us, then, lay between an appointment by Electors chosen by the people, and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged against it, and greatly preferable to an appointment by the National Legislature. As the Electors would be chosen for the occasion, would meet at once, and proceed immediately to an appointment, there would be very little opportunity for cabal, or corruption: as a further precaution, it might be required that they should meet at some place distinct from the seat of govern-

ment; and even that no person within a certain distance of the place at the time, should be eligible. This mode, however, had been rejected so recently, and by so great a majority, that it probably would not be proposed anew. The remaining mode was an election by the people, or rather by the qualified part of them at large. With all its imperfections, he liked this best. He would not repeat either the general arguments for, or the objections against, this mode. He would only take notice of two difficulties, which he admitted to have weight. The first arose from the disposition in the people to prefer a citizen of their own State, and the disadvantage this would throw on the smaller States. Great as this objection might be, he did not think it equal to such as lay against every other mode which had been proposed. He thought, too, that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the Northern and Southern States, and the disadvantages which this mode would throw on the latter. The answer to this objection was—in the first place, that this disproportion would be continually decreasing under the influence of the republican laws introduced in the Southern States, and the more rapid increase of their population; in the second place, that local considerations must give way to the general interest. As an individual from the Southern States, he was willing to make the sacrifice.

Mr. ELLSWORTH. The objection drawn from the different sizes of the States is unanswerable. The citizens of the largest States would invariably pre-

fer the candidate within the State; and the largest States would invariably have the man.

On the question on Mr. ELLSWORTH's motion, as above,—New Hampshire, Connecticut, Pennsylvania, Maryland, aye—4; Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, no—7.

Mr. PINCKNEY moved, "that the election by the Legislature be qualified with a proviso, that no person be eligible for more than six years in any twelve years." He thought this would have all the advantage, and at the same time avoid in some degree the inconvenience, of an absolute ineligibility a second time.

Col. MASON approved the idea. It had the sanction of experience in the instance of Congress, and some of the Executives of the States. It rendered the Executive as effectually independent, as an ineligibility after his first election; and opened the way, at the same time, for the advantage of his future services. He preferred on the whole the election by the National Legislature; though candor obliged him to admit, that there was great danger of foreign influence, as had been suggested. This was the most serious objection, with him, that had been urged.

Mr. BUTLER. The two great evils to be avoided are, cabal at home, and influence from abroad. It will be difficult to avoid either, if the election be made by the National Legislature. On the other hand the Government should not be made so complex and unwieldy as to disgust the States. This would be the case if the election should be referred

to the people. He liked best an election by Electors chosen by the Legislatures of the States. He was against a re-eligibility at all events. He was also against a ratio of votes in the States. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the Executive, as in that of the Legislature.

Mr. GERRY approved of Mr. PINCKNEY's motion, as lessening the evil.

Mr. GOUVERNEUR MORRIS was against a rotation in every case. It formed a political school, in which we were always governed by the scholars, and not by the masters. The evils to be guarded against in this case are,—first, the undue influence of the Legislature; secondly, instability of councils; thirdly, misconduct in office. To guard against the first, we run into the second evil. We adopt a rotation which produces instability of councils. To avoid Scylla we fall into Charybdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the State of Pennsylvania. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Solomon. Secondly, the rotation in office will not prevent intrigue and dependence on the Legislature. The man in office will look forward to the period at which he will become re-eligible. The distance of the period, the improbability of such a protraction of his life, will be no obstacle. Such is the nature of man—formed by his benevolent Author, no doubt, for wise ends—that although he knows his existence to be limited to a span, he takes his mea-

asures as if he were to live forever. But taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his re-election to the Executive, he will be pretty sure to keep in view the opportunity of his going into the Legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the Legislature, on his influence over which the figure he is to make will depend. Finally, to avoid the third evil, impeachments will be essential; and hence an additional reason against an election by the Legislature. He considered an election by the people as the best, by the Legislature as the worst, mode. Putting both these aside, he could not but favor the idea of Mr. WILSON, of introducing a mixture of lot. It will diminish, if not destroy, both cabal and dependence.

Mr. WILLIAMSON was sensible that strong objections lay against an election of the Executive by the Legislature, and that it opened a door for foreign influence. The principal objection against an election by the people seemed to be, the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for three candidates; one of them, he observed, would be probably of his own State, the other two of some other States; and as probably of a small as a large one.

Mr. GOUVERNEUR MORRIS liked the idea; suggesting as an amendment, that each man should vote for

two persons, one of whom at least should not be of his own State.

Mr. MADISON also thought something valuable might be made of the suggestion, with the proposed amendment of it. The second best man in this case would probably be the first in fact. The only objection which occurred was, that each citizen, after having given his vote for his favorite fellow citizen, would throw away his second on some obscure citizen of another State, in order to ensure the object of his first choice. But it could hardly be supposed that the citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might, moreover, be provided, in favor of the smaller States, that the Executive should not be eligible more than — times in — years from the same State.

Mr. GERRY. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men dispersed through the Union, and acting in concert, to delude them into any appointment. He observed that such a society of men existed in the Order of the Cincinnati. They are respectable, united and influential. They will, in fact, elect the Chief Magistrate in every instance, if the election be referred to the people. His respect for the characters composing this Society, could not blind him to the danger and impropriety of throwing such a power into their hands.

Mr. DICKINSON. As far as he could judge from the discussions which had taken place during his

attendance, insuperable objections lay against an election of the Executive by the National Legislature; as also by the Legislatures or Executives of the States. He had long leaned towards an election by the people, which he regarded as the best and purest source. Objections he was aware lay against this mode, but not so great, he thought, as against the other modes. The greatest difficulty, in the opinion of the House, seemed to arise from the partiality of the States to their respective citizens. But might not this very partiality be turned to a useful purpose? Let the people of each State choose its best citizen. The people will know the most eminent characters of their own States; and the people of different States will feel an emulation in selecting those of whom they will have the greatest reason to be proud. Out of the thirteen names thus selected, an Executive Magistrate may be chosen either by the National Legislature, or by Electors appointed by it.

On a question which was moved, for postponing Mr. PINCKNEY's motion, in order to make way for some such proposition as had been hinted by Mr. WILLIAMSON and others, it passed in the negative,—Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, aye—5; New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia, no—6.

On Mr. PINCKNEY's motion, that no person shall serve in the Executive more than six years in twelve years, it passed in the negative,—New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia, aye—5; Connecticut, New Jersey,

Pennsylvania, Delaware, Maryland, Virginia, no—6.

On a motion that the members of the Committee be furnished with copies of the proceedings, it was so determined, South Carolina alone being in the negative.

It was then moved, that the members of the House might take copies of the Resolutions which had been agreed to; which passed in the negative, —Connecticut, New Jersey, Delaware, Virginia, North Carolina, aye—5; New Hampshire, Massachusetts, Pennsylvania, Maryland, South Carolina, Georgia, no—6.

Mr. GERRY and Mr. BUTLER moved to refer the resolution relating to the Executive (except the clause making it consist of a single person) to the Committee of detail.

Mr. WILSON hoped that so important a branch of the system would not be committed, until a general principle should be fixed by a vote of the House.

Mr. LANGDON was for the commitment.

Adjourned.

THURSDAY, JULY 26TH.

In Convention,—Mr. MASON. In every stage of the question relative to the Executive, the difficulty of the subject and the diversity of the opinions concerning it, have appeared. Nor have any of the modes of constituting that Department been satis-

factory. First, it has been proposed that the election should be made by the people at large; that is, that an act which ought to be performed by those who know most of eminent characters and qualifications, should be performed by those who know least; secondly, that the election should be made by the Legislatures of the States; thirdly, by the Executives of the States. Against these modes, also, strong objections have been urged. Fourthly, it has been proposed that the election should be made by Electors chosen by the people for that purpose. This was at first agreed to; but on further consideration has been rejected. Fifthly, since which, the mode of Mr. WILLIAMSON, requiring each freeholder to vote for several candidates, has been proposed. This seemed, like many other propositions, to carry a plausible face, but on closer inspection is liable to fatal objections. A popular election in any form, as Mr. GERRY has observed, would throw the appointment into the hands of the Cincinnati, a society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the government. Sixthly, another expedient was proposed by Mr. DICKINSON, which is liable to so palpable and material an inconvenience, that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own State; though the causes of his local unpopularity might be of such a nature, as to recommend him to the States at large. Seventhly, among other expedients, a lottery has been introduced. But as the tickets do not appear to be in much demand, it will

probably not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude, that an election by the National Legislature, as originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived, at the same time, that a second election ought to be absolutely prohibited. Having for his primary object—for the polar star of his political conduct—the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the great officers of state, and particularly the Executive, should at fixed periods return to that mass from which they were at first taken, in order that they may feel and respect those rights and interests which are again to be personally valuable to them. He concluded with moving, that the constitution of the Executive, as reported by the Committee of the Whole, be re-instated, viz. “that the Executive be appointed for seven years, and be ineligible a second time.”

Mr. DAVIE seconded the motion.

Doctor FRANKLIN. It seems to have been imagined by some, that the returning to the mass of the people was degrading the magistrate. This he thought was contrary to republican principles. In free governments the rulers are the servants, and the people their superiors and sovereigns. For the former, therefore, to return among the latter, was not to *degrade*, but to *promote*, them. And it would be imposing an unreasonable burden on them, to keep them always in a state of servitude, and not allow them to become again one of the masters.

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On the question on Col. MASON's motion, as above, it passed in the affirmative,—

New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—7; Connecticut, Pennsylvania, Delaware, no—3; Massachusetts, not on the floor.

Mr. GOUVERNEUR MORRIS was now against the whole paragraph. In answer to Col. MASON's position, that a periodical return of the great officers of the state into the mass of the people was the palladium of civil liberty, he would observe, that on the same principle the Judiciary ought to be periodically degraded; certain it was, that the Legislature ought, on every principle, yet no one had proposed, or conceived that the members of it should not be re-eligible. In answer to Doctor FRANKLIN, that a return into the mass of the people would be a promotion, instead of a degradation, he had no doubt that our Executive, like most others, would have too much patriotism to shrink from the burthen of his office, and too much modesty not to be willing to decline the promotion.

On the question on the whole Resolution, as amended, in the words following: "that a National Executive be instituted, to consist of a single person, to be chosen by the National Legislature, for the term of seven years, to be ineligible a second time, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be removable on impeachment and conviction of mal-practice or neglect of duty, to receive a fixed compensation for the devotion of his time to

the public service, to be paid out of the national Treasury,"—it passed in the affirmative,—

New Hampshire, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, aye—6; Pennsylvania, Delaware, Maryland, no—3; Massachusetts, not on the floor; Virginia, divided—Mr. BLAIR and Col. MASON, aye; General WASHINGTON and Mr. MADISON, no. Mr. RANDOLPH happened to be out of the House.

Mr. MASON moved, "that the Committee of Detail be instructed to receive a clause requiring certain qualifications of landed property, and citizenship of the United States, in members of the National Legislature; and disqualifying persons having unsettled accounts with, or being indebted to, the United States, from being members of the National Legislature." He observed that persons of the latter descriptions had frequently got into the State Legislatures, in order to promote laws that might shelter their delinquencies; and that this evil had crept into Congress, if report was to be regarded.

Mr. PINCKNEY seconded the motion.

Mr. GOUVERNEUR MORRIS. If qualifications are proper, he would prefer them in the electors, rather than the elected. As to debtors of the United States, they are but few. As to persons having unsettled accounts, he believed them to be pretty many. He thought, however, that such a discrimination to be both odious and useless, and in many instances, unjust and cruel. The delay of settlement had been more the fault of the public, than of the individuals. What will be done with those patriotic citizens who have lent money, or services, or property, to their country, without having been yet able

to obtain a liquidation of their claims? Are they to be excluded?

Mr. GORHAM was for leaving to the Legislature the providing against such abuses as had been mentioned.

Col. MASON mentioned the parliamentary qualifications adopted in the reign of Queen Anne, which he said had met with universal approbation.

Mr. MADISON had witnessed the zeal of men having accounts with the public, to get into the Legislatures for sinister purposes. He thought, however, that if any precaution were taken for excluding them, the one proposed by Col. MASON ought to be re-modelled. It might be well to limit the exclusion to persons who had received money from the public, and had not accounted for it.

Mr. GOUVERNEUR MORRIS. It was a precept of great antiquity, as well as of high authority, that we should not be righteous overmuch. He thought we ought to be equally on our guard against being wise overmuch. The proposed regulation would enable the Government to exclude particular persons from office as long as they pleased. He mentioned the case of the Commander-in-Chief's presenting his account for secret services, which, he said, was so moderate that every one was astonished at it; and so simple that no doubt could arise on it. Yet, had the Auditor been disposed to delay the settlement, how easily he might have effected it, and how cruel would it be in such a case to keep a distinguished and meritorious citizen under a temporary disability and disfranchisement. He mentioned this case, merely to illustrate the objectionable nature of the proposition. He was opposed to

such minutious regulations in a Constitution. The parliamentary qualifications quoted by Col. MASON had been disregarded in practice; and were but a scheme of the landed against the monied interest.

Mr. PINCKNEY and General PINCKNEY moved to insert, by way of amendment, the words, "Judiciary and Executive," so as to extend the qualifications to those Departments; which was agreed to, *nem. con.*

Mr. GERRY thought the inconvenience of excluding a few worthy individuals, who might be public debtors, or have unsettled accounts, ought not to be put in the scale against the public advantages of the regulation, and that the motion did not go far enough.

Mr. KING observed, that there might be great danger in requiring landed property as a qualification; since it might exclude the moneyed interest, whose aids may be essential in particular emergencies to the public safety.

Mr. DICKINSON was against any recital of qualifications in the Constitution. It was impossible to make a complete one; and a partial one would, by implication, tie up the hands of the Legislature from supplying the omissions. The best defence lay in the freeholders who were to elect the Legislature. Whilst this resource should remain pure, the public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a republican Constitution a veneration for wealth. He had always understood that a veneration for poverty and virtue were the objects of republican encouragement. It seemed improper that any man of merit

should be subjected to disabilities in a republic, where merit was understood to form the great title to public trust, honors, and rewards.

Mr. GERRY. If property be one object of government, provisions to secure it cannot be improper.

Mr. MADISON moved to strike out the word "*land-**ed*," before the word "qualifications." If the proposition should be agreed to, he wished the Committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust laws of the States had proceeded more from this class of men, than any others. It had often happened that men who had acquired landed property on credit got into the Legislatures with a view of promoting an unjust protection against their creditors. In the next place, if a small quantity of land should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of citizens, who were not landholders. It was politic as well as just, that the interests and rights of every class should be duly represented and understood in the public councils. It was a provision every where established, that the country should be divided into districts, and representatives taken from each, in order that the Legislative assembly might equally understand and sympathize with the rights of the people in every part of the community. It was not less proper, that every class of citizens should have an opportunity of making their rights

be felt and understood in the public councils. The three principal classes into which our citizens were divisible, were the landed, the commercial, and the manufacturing. The second and third class bear, as yet, a small proportion to the first. The proportion, however, will daily increase. We see in the populous countries of Europe now, what we shall be hereafter. These classes understand much less of each other's interests and affairs, than men of the same class inhabiting different districts. It is particularly requisite, therefore, that the interests of one or two of them, should not be left entirely to the care or impartiality of the third. This must be the case, if landed qualifications should be required; few of the mercantile, and scarcely any of the manufacturing, class, choosing, whilst they continue in business, to turn any part of their stock into landed property. For these reasons he wished, if it were possible, that some other criterion than the mere possession of land should be devised. He concurred with Mr. GOUVERNEUR MORRIS in thinking that qualifications in the electors would be much more effectual than in the elected. The former would discriminate between real and ostensible property in the latter; but he was aware of the difficulty of forming any uniform standard that would suit the different circumstances and opinions prevailing in the different States.

Mr. GOUVERNEUR MORRIS seconded the motion.

On the question for striking out "landed,"—New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, aye—10; Maryland, no. 1.

On the question on the first part of Colonel MASON's proposition, as to "qualification of property and citizenship," as so amended,—New Hampshire, Massachusetts, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye—8; Connecticut, Pennsylvania, Delaware, no—3.

The second part, for disqualifying debtors, and persons having unsettled accounts, being under consideration,—

Mr. CARROLL moved to strike out, "having unsettled accounts."

Mr. GORHAM seconded the motion; observing, that it would put the commercial and manufacturing part of the people on a worse footing than others, as they would be most likely to have dealings with the public.

Mr. L. MARTIN. If these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

Mr. WILSON was for striking them out. They put too much power in the hands of the auditors, who might combine with rivals in delaying settlements, in order to prolong the disqualifications of particular men. We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids of individuals, which will necessarily open accounts with the public; and when such accounts will be a characteristic of patriotism. Besides, a partial enumera-

tion of cases will disable the Legislature from disqualifying odious and dangerous characters.

Mr. LANGDON was for striking out the whole clause, for the reasons given by Mr. WILSON. So many exclusions, he thought, too, would render the system unacceptable to the people.

Mr. GERRY. If the arguments used to-day were to prevail, we might have a Legislature composed of public debtors, pensioners, placemen and contractors. He thought the proposed disqualifications would be pleasing to the people. They will be considered as a security against unnecessary or undue burdens being imposed on them. He moved to add, "pensioners" to the disqualified characters; which was negatived,—Massachusetts, Maryland, Georgia, aye—3; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, no—7; North Carolina, divided.

Mr. GOUVERNEUR MORRIS. The last clause, relating to public debtors, will exclude every importing merchant. Revenue will be drawn, it is foreseen, as much as possible from trade. Duties, of course, will be bonded; and the merchants will remain debtors to the public. He repeated that it had not been so much the fault of individuals, as of the public, that transactions between them, had not been more generally liquidated and adjusted. At all events, to draw from our short and scanty experience rules that are to operate through succeeding ages, does not savor much of real wisdom.

On the question for striking out, "persons having unsettled accounts with the United States,"—New Hampshire, Massachusetts, Connecticut, Pennsylv-

nia, Delaware, Maryland, Virginia, North Carolina, South Carolina, aye—9; New Jersey, Georgia, no—2.

Mr. ELLSWORTH was for disagreeing to the remainder of the clause disqualifying public debtors; and for leaving to the wisdom of the Legislature, and the virtue of the citizens, the task of providing against such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides, how is it to be known to the people, when they elect, who are, or are not, public debtors. The exclusion of pensioners and placemen in England is founded on a consideration not existing here. As persons of that sort are dependent on the crown, they tend to increase its influence.

Mr. PINCKNEY said he was at first a friend to the proposition, for the sake of the clause relating to qualifications of property; but he disliked the exclusion of public debtors; it went too far. It would exclude persons who had purchased confiscated property, or should purchase western territory of the public; and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors,—

North Carolina, Georgia, aye—2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, no—9. ²⁰⁰

Colonel MASON observed that it would be proper, as he thought, that some provision should be made in the Constitution against choosing for the seat of the

General Government the city or place at which the seat of any State Government might be fixed. There were two objections against having them at the same place, which, without mentioning others, required some precaution on the subject. The first was, that it tended to produce disputes concerning jurisdiction. The second and principal one was, that the intermixture of the two Legislatures tended to give a provincial tincture to the national deliberations. He moved that the Committee be instructed to receive a clause to prevent the seat of the National Government being in the same city or town with the seat of the Government of any State, longer than until the necessary public buildings could be erected.

Mr. ALEXANDER MARTIN seconded the motion.

Mr. GOUVERNEUR MORRIS did not dislike the idea, but was apprehensive that such a clause might make enemies of Philadelphia and New York, which had expectations of becoming the seat of the General Government.

Mr. LANGDON approved the idea also; but suggested the case of a State moving its seat of government to the national seat after the erection of the public buildings.

Mr. GORHAM. The precaution may be evaded by the National Legislature, by delaying to erect the public buildings.

Mr. GERRY conceived it to be the general sense of America, that neither the seat of a State Government, nor any large commercial city should be the seat of the General Government.

Mr. WILLIAMSON liked the idea; but knowing how

much the passions of men were agitated by this matter, was apprehensive of turning them against the system. He apprehended, also, that an evasion might be practised in the way hinted by Mr. GORHAM.

Mr. PINCKNEY thought the seat of a State Government ought to be avoided; but that a large town, or its vicinity, would be proper for the seat of the General Government.

Col. MASON did not mean to press the motion at this time, nor to excite any hostile passions against the system. He was content to withdraw the motion for the present.

Mr. BUTLER was for fixing, by the Constitution, the place, and a central one, for the seat of the National Government.

The proceedings since Monday last were unanimously referred to the Committee of Detail; and the Convention then unanimously adjourned till Monday, August 6th, that the Committee of Detail might have time to prepare and report the Constitution. The whole Resolutions, as referred, are as follows:

1. *Resolved*, That the Government of the United States ought to consist of a supreme Legislative, Judiciary, and Executive.

2. *Resolved*, That the Legislature consist of two branches.

3. *Resolved*, That the members of the first branch of the Legislature ought to be elected by the people of the several States for the term of two years; to be paid out of the public treasury; to receive an

adequate compensation for their services ; to be of the age of twenty-five years at least ; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

4. *Resolved*, That the members of the second branch of the Legislature of the United States ought to be chosen by the individual Legislatures ; to be of the age of thirty years at least ; to hold their offices for six years, one-third to go out biennially ; to receive a compensation for the devotion of their time to the public service ; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

5. *Resolved*, That each branch ought to possess the right of originating acts.

6. *Resolved*, That the National Legislature ought to possess the legislative rights vested in Congress by the Confederation ; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the States are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

7. *Resolved*, That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective States, as far as

those acts or treaties shall relate to the said States, or their citizens and inhabitants; and that the Judiciaries of the several States shall be bound thereby in their decisions, any thing in the respective laws of the individual States to the contrary notwithstanding.

8. *Resolved*, That in the original formation of the Legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number,

New Hampshire	shall send	. three,
Massachusetts		eight,
Rhode Island		one,
Connecticut		five,
New York		six,
New Jersey		four,
Pennsylvania		eight,
Delaware		one,
Maryland		six,
Virginia		ten,
North Carolina		five,
South Carolina		five,
Georgia		three.

But as the present situation of the states, may probably alter in the number of their inhabitants, the Legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the States shall hereafter be divided, or enlarged by addition of territory, or any two or more States united, or any new States created within the limits of the United States, the Legislature of the United States shall possess authority to regulate the number of representatives, in any of

the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned, namely—Provided always, that representation ought to be proportioned to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time, by the changes in the relative circumstances of the States,—

9. *Resolved*, That a census be taken within six years from the first meeting of the Legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the eighteenth of April, 1783; and that the Legislature of the United States shall proportion the direct taxation accordingly.

10. *Resolved*, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the Government of the United States, shall originate in the first branch of the Legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

11. *Resolved*, That in the second branch of the Legislature of the United States, each State shall have an equal vote.

12. *Resolved*, That a National Executive be instituted, to consist of a single person; to be chosen by the National Legislature, for the term of seven years; to be ineligible a second time; with power

to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of malpractice or neglect of duty; to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the public treasury.

13. *Resolved*, That the National Executive shall have a right to negative any legislative act; which shall not be afterwards passed, unless by two third parts of each branch of the National Legislature.

14. *Resolved*, That a National Judiciary be established, to consist of one supreme tribunal, the Judges of which shall be appointed by the second branch of the national Legislature; to hold their offices during good behaviour; to receive punctually at stated times, a fixed compensation for their services, in which no diminution shall be made so as to affect the persons actually in office at the time of such diminution.

15. *Resolved*, That the National Legislature be empowered to appoint inferior tribunals.

16. *Resolved*, That the jurisdiction of the National Judiciary shall extend to cases arising under laws passed by the General Legislature; and to such other questions as involve the national peace and harmony.

17. *Resolved*, That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the National Legislature less than the whole.

18. *Resolved*, That a republican form of government shall be guaranteed to each State; and that each State shall be protected against foreign and domestic violence.

19. *Resolved*, That provision ought to be made for the amendment of the Articles of Union, whenever it shall seem necessary.

20. *Resolved*, That the Legislative, Executive and Judiciary powers, within the several States, and of the National Government, ought to be bound, by oath, to support the Articles of Union.

21. *Resolved*, That the amendments which shall be offered to the Confederation by the Convention ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly, or assemblies, of representatives, recommended by the several Legislatures, to be expressly chosen by the people to consider and decide thereon.

22. *Resolved*, That the representation in the second branch of the Legislature of the United States shall consist of two members from each State, who shall vote *per capita*.

23. *Resolved*, That it be an instruction to the Committee to whom were referred the proceedings of the Convention for the establishment of a National Government, to receive a clause, or clauses, requiring certain qualifications of property and citizenship in the United States, for the Executive, the Judiciary, and the members of both branches of the Legislature of the United States. ²⁰⁰

With the above Resolutions were referred the propositions offered by Mr. C. PINCKNEY on the
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twenty-ninth of May, and by Mr. PATTERSON on the fifteenth of June.

Adjourned.

MONDAY, AUGUST 6TH.

In Convention,—Mr. JOHN FRANCIS MERCER, from Maryland, took his seat.

Mr. RUTLEDGE delivered in the Report of the Committee of Detail, as follows—a printed copy being at the same time furnished to each member :

We the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following Constitution for the government of ourselves and our posterity.

ARTICLE I.

The style of the Government shall be, “The United States of America.”

ARTICLE II.

The Government shall consist of supreme Legislative, Executive, and Judicial powers.

ARTICLE III.

The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate;

each of which shall in all cases have a negative on the other. The Legislature shall meet on the first Monday in December in every year.

ARTICLE IV.

Sect. 1. The members of the House of Representatives shall be chosen every second year, by the people of the several States comprehended within this Union. The qualifications of the electors shall be the same from time to time, as those of the electors in the several States, of the most numerous branch of their own Legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different States will alter from time to time; as some of the States may hereafter be divided; as others may

be enlarged by addition of territory ; as two or more States may be united ; as new States will be erected within the limits of the United States, the Legislature shall, in each of these cases, regulate the number of Representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its Speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the Executive authority of the State in the representation from which they shall happen.

ARTICLE V.

Sect. 1. The Senate of the United States shall be chosen by the Legislatures of the several States. Each Legislature shall choose two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote.

Sect. 2. The Senators shall be chosen for six years ; but immediately after the first election, they

shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the State for which he shall be chosen.

Sect. 4. The Senate shall choose its own President and other officers.

ARTICLE VI.

Sect. 1. The times, and places, and manner of holding the elections of the members of each House, shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States.

Sect. 2. The Legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns, and qualifications, of its own members.

Sect. 5. Freedom of speech and debate in the Legislature shall not be impeached or questioned in any court or place out of the Legislature; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The House of Representatives, and the Senate, when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each House, on any question, shall, at the desire of one fifth part of the members present, be entered on the Journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the ——— Article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected: and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the State in which they shall be chosen.

Sect. 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate of the United States, in Congress assembled."

Sect. 12. Each House shall possess the right of originating bills, except in the cases before mentioned.

Sect. 13. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated; who shall enter the objections at large on their Journal, and proceed to reconsider the bill. But if, after such reconsideration, two-thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other House, by which it shall likewise be re-considered, and if approved by two-thirds of the other House also, it shall become a law. But in all such cases, the votes of both Houses shall be determined by Yeas and Nays; and the names of the persons voting for or against the bill, shall be entered on

the Journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the Legislature, by their adjournment, prevent its return; in which case it shall not be a law.

ARTICLE VII.

Sect. 1. The Legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several States;

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post-offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a Treasurer by ballot;

To constitute tribunals inferior to the Supreme Court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any State, on the application of its Legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the Union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof.

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes); which number shall, within six years after the first meeting of the Legislature, and within the term of every ten years afterwards, be taken in such a manner as the said Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Le-

gislature on articles exported from any State; nor on the migration or importation of such persons as the several States shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two-thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of nobility.

ARTICLE VIII.

The acts of the Legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several States, and of their citizens and inhabitants; and the Judges in the several States shall be bound thereby in their decisions, any thing in the Constitutions or laws of the several States to the contrary notwithstanding.

ARTICLE IX.

Sect. 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and Judges of the Supreme Court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more States, respecting jurisdiction or territory, the Senate shall possess the following powers:—

Whenever the Legislature, or the Executive authority, or lawful agent of any State, in controversy with another, shall by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the Legislature, or the Executive authority, of the other State in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several States; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number, not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each State, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their

claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward."

Sect. 3. All controversies concerning lands claimed under different grants of two or more States, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different States.

ARTICLE X.

Sect. 1. The Executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America," and his title shall be, "His Excellency." He shall be elected by ballot by the Legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the Legislature, of the state of the Union. He may recommend to their consideration such

measures as he shall judge necessary, and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive Ambassadors, and may correspond with the supreme executives of the several States. He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be Commander-in-chief of the army and navy of the United States, and of the militia of the several States. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I —— solemnly swear, (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction, in the Supreme Court, of treason, bribery or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties, until another President of the United States be chosen, or until the disability of the President be removed.

ARTICLE XI.

Sect. 1. The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts, as shall, when necessary, from time to time, be constituted by the Legislature of the United States.

Sect. 2. The Judges of the Supreme Court, and of the inferior courts, shall hold their offices during good behaviour. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more States, (except such as shall regard territory or jurisdiction); between a state and citizens of another State; between citizens of different States; and between a state, or the citizens thereof, and foreign states, citizens or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, this jurisdiction shall be original. In all the other cases beforementioned, it shall be appellate, with such exceptions, and under such regulations, as the Legislature shall make. The Legislature may assign any part of the jurisdiction above mentioned (except the trial of the President

of the United States) in the manner, and under the limitations which it shall think proper, to such inferior courts, as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachment) shall be in the State where they shall be committed; and shall be by jury.

Sect. 5. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

ARTICLE XII.

No State shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance or confederation; nor grant any title of nobility.

ARTICLE XIII.

No State, without the consent of the Legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another State, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the Legislature of the United States can be consulted.

ARTICLE XIV.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

ARTICLE XV.

Any person charged with treason, felony or high misdemeanour in any State, who shall flee from justice, and shall be found in any other State, shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence.

ARTICLE XVI.

Full faith shall be given in each State to the acts of the Legislatures, and to the records and judicial proceedings of the courts and magistrates, of every other State.

ARTICLE XVII.

New States lawfully constituted or established within the limits of the United States may be admitted, by the Legislature, into this government; but to such admission the consent of two-thirds of the members present in each House shall be necessary. If a new State shall arise within the limits of any of the present States, the consent of the Legislatures of such States shall be also necessary to its admission. If the admission be consented to, the new States shall be admitted on the same terms with

the original States. But the Legislature may make conditions with the new States, concerning the public debt which shall be then subsisting.

ARTICLE XVIII.

The United States shall guarantee to each State a republican form of government ; and shall protect each State against foreign invasions, and, on the application of its Legislature, against domestic violence.

ARTICLE XIX.

On the application of the Legislatures of two-thirds of the States in the Union, for an amendment of this Constitution, the Legislature of the United States shall call a convention for that purpose.

ARTICLE XX.

The members of the Legislatures, and the Executive and Judicial officers of the United States, and of the several States, shall be bound by oath to support this Constitution.

ARTICLE XXI.

The ratification of the Conventions of — States shall be sufficient for organizing this Constitution.

ARTICLE XXII.

This Constitution shall be laid before the United States in Congress assembled, for their approbation ; and it is the opinion of this Convention, that it

should be afterwards submitted to a Convention chosen in each State, under the recommendation of its Legislature, in order to receive the ratification of such Convention.

ARTICLE XXIII.

To introduce this government, it is the opinion of this Convention, that each assenting Convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the Conventions of —— States, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that after such publication, the Legislatures of the several States should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the Legislature should meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution. ²⁰¹

A motion was made to adjourn till Wednesday, in order to give leisure to examine the Report; which passed in the negative,—Pennsylvania, Maryland, Virginia, aye—3; New Hampshire, Massachusetts, Connecticut, North Carolina, South Carolina, no—5.

The House then adjourned till to-morrow at eleven o'clock.

APR 11 1931

